Supreme Court, U.S.
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No. 06-357

In The

Supreme Court of the United States

MICHAEL C. ARMSTRONG,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

On Petition For A Writ Of Certiorari To The Indiana Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Is a person (presumed to know the law) chargeable with knowledge that a decision of an appellate court is wrong?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

MICHAEL ARMSTRONG

THE STATE OF INDIANA

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OPINION BELOW

Mr. Armstrong petitions for a review of a published decision of the Indiana Supreme Court's June 15, 2006, opinion in *Armstrong v. State*, 848 N.E.2d 1088 (Ind. 2006).

A copy of the *Armstrong* decision is found on page 1 (App. 1) of the Appendix.

JURISDICTION

The Indiana Supreme Court rendered its ruling June 15, 2006. This Court has jurisdiction to review the state case pursuant to 28 U.S.C. § 1257(a) on a Writ of Certiorari.

The presence of a federal constitutional question provides the basis for jurisdiction. Mr. Armstrong was denied fair notice, due process protection when the Indiana Supreme Court rendered his acts criminal after the fact via a retroactively broadened interpretation of a state criminal statute far beyond what a "fair reading" (via *Bouie v. City of Columbia*, 378 U.S. 347 (1964)) of the statute would have allowed under existing Indiana law.

The Court will note this issue comes before it by way of an interlocutory appeal and as such represents a rarity for these are seldom before the Court. However they can be if the federal issue is conclusive for the outcome. A reversal of the Indiana Supreme Court's ruling on the federal issue will be conclusive dismissing the case.

> "Those cases in which there are further proceedings – even entire trials – yet to occur in the state courts but where for one reason or another the federal issue is conclusive or the

> outcome preordained. In these circumstances because the case is for all practical purposes concluded, the judgment of the state court on the federal issue is deemed final." Robert Stern et al., *Supreme Court Practice* § 3.7, p. 153 (8th ed. 2002)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The *Armstrong* decision made Mr. Armstrong's omission criminal after the fact.

The rationale behind this request for a Writ of Certiorari hinges on the proposition that Mr. Armstrong is protected from unexpected changes of law that deprive him of fair notice due process protection that his conduct will be deemed criminal via a judicial interpretation of a criminal statute.

He cites the following constitutional amendments as authority:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law * * * * * " U.S. Const. amend. V

> * * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. * * * " U.S. Const. amend XIV

STATEMENT OF FACTS

> [N.B. The facts were taken from the affidavit of probable cause and charging information filed by the Gibson County Prosecutor. These facts were used as the basis of a motion to dismiss. Under Indiana procedural law the facts in a motion to dismiss are taken as true.]

On May 31, 2003, Michael Armstrong was driving down a county road when his passenger, Craig R. Mobley, jumped out. (App. 2, 84, 85, 62, 72) Mr. Armstrong did not stop, panicked[1] (App. 2) and returned an hour later with his father to give a statement to the police. (App. 3, 85, 64, 72) The passenger later died from injuries sustained from jumping out of the car and hitting the road. (A. 61) Mr. Mobley was not hit by Mr. Armstrong's car. (App. 84)

On June 16, 2003, the Gibson County Prosecutor filed an information and affidavit of probable cause charging Mr. Armstrong with leaving the scene of an accident under Indiana Code § 9-26-1-1, Indiana Code § 9-26-1-8. (App. 82, 84)

Because Mr. Armstrong did not hit Mr. Mobley with his car he filed a motion to dismiss citing Fifth Amendment due

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[1] This fact serves as a red herring. It distorts the issue. One connotes from this fact that Mr. Armstrong did not know or rely on *Honeycutt's* holding that the statute in question did not apply. *Bouie* makes it clear for a fair warning violation the court looks at the statute and its explanatory case law and not the party's subjective intent.

> "[T]he determination whether a criminal statute provides fair warning of its prohibitions must be made on the basis of the statute itself and the other pertinent law, rather than on the basis of an ad hoc appraisal of the subjective expectations of the particular defendants." *Bouie v. Columbia*, 378 U.S. 347, 355, 12 L. Ed. 2d 894, 901 (1964)(FN5) (1964)

process grounds as his omission (not stopping in the absence of contact) was not prohibited by code.[2] (App. 51) At the time of the incident Indiana did not bestow a duty upon one to stop at the scene of an accident absent hitting a person or a thing. *Honeycutt v. State*, 760 N.E.2d 648 (Ind.Ct.App.2001). (App. 86) *Honeycutt* held the "leaving the scene" statute only applied to situations where someone has been hit by a car. *Honeycutt*, 760 N.E.2d at 651. (App. 86, 92)

Thus no contact, no duty to stop, *no crime*.[3]

However the Gibson Superior Court did not agree with Mr. Armstrong's motion to dismiss and denied the motion December 17, 2003. (App. 26) It felt it did not matter whether there was contact or not. A person still had to stop and comply with the statute. (App. 29) The question was unique and troublesome however so on January 5, 2004, the trial court granted Mr. Armstrong's request for a certification of an interlocutory appeal. (App. 25)

Mr. Armstrong then filed a motion for the Indiana Court of Appeals to accept jurisdiction over the appeal (App. 40) and they granted it February 20, 2004. (App. 23)

The issue on appeal was whether or not there must be contact for the various duties of the "leaving the scene" statute to apply or whether one had to stop regardless of

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[2] An omission is only criminal in Indiana if "a * * * person has a statutory, common law, or contractual duty to perform the act." Indiana Code § 35-41-2-1

[3] Unless a penal statute provides for an offense under the facts provided there is no crime. Indiana does not have common law crime. *Gingerich v. State*, 226 Ind. 678, 679 (1948) (Emment, J. dissent), *State v. Sutherin*, 92 N.E.2d 923, 925 (Ind. 1950).

any contact at all. The Indiana Court of Appeals opted for the latter but added it would not apply its decision retroactively to Mr. Armstrong because the ruling was so markedly different from existing Indiana case law that he simply did not have fair notice his crime would be considered a crime as required by due process under the Fifth Amendment. *Bouie v. City of Columbia*, 378 U.S. 427 (1964) (App. 21-22) They ordered the case dismissed. (App. 22)

The Supreme Court granted transfer June 15, 2006, and reversed the Indiana Court of Appeals on the retroactivity issue (App. 1, 11) It said fair notice was not a problem because "anyone reading Indiana Code section 9-26-1-1 could easily have concluded that *Honeycutt* was contrary to the statute's plain meaning." *Armstrong v. State*, 848 N.E.2d 1088, 1094 (Ind. 2006) (App. 10)

In short the Indiana Supreme Court said Mr. Armstrong should have known *Honeycutt* was wrong. By implication therefore a Hoosier must now have greater knowledge than his court and question all judicial decisions for fear that acts deemed innocent by them will be rendered criminal after the fact. A crystal ball is now required in Indiana because if you can't predict what the court will do then you are not entitled to due process fair notice protection under the Fifth Amendment as applied to the States by the Fourteenth Amendment. The effect? *Bouie* has been superseded by *Armstrong*. Fair notice is not required anymore.

REASONS FOR GRANTING THE PETITION

I. Argument

One has to read the *Armstrong* decision to appreciate its faults. For starters, consider the reasoning.

A. One Is Presumed To Know The Present State Of The Law

The Indiana Supreme Court's rationale in *Armstrong* is that he should have known his court was wrong. This presumes a lot. Warranted? In order for us to answer this we must understand the scope of the presumption.

It is established that everyone is presumed to know the civil and criminal law. *Cary v. Curtis*, 3 How. 236, 251, 11 L. Ed. 576, 584 (1845), *Lohm v. State*, 380 N.E.2d 561, 565 (Ind.Ct.App.1978) (The entire citizenry of Indiana deemed to have notice of criminal code.)

If there is a statute or case explaining the scope and extent of a statute one is deemed to know it and its explanatory case holdings. 31A C.J.S. *Evidence* § 132(2), p. 260 (1964)

Whether one knows of these or not is immaterial as the consequences visit all alike. 31A C.J.S. *Evidence* § 132(2), p. 259 (1964) Conversely the benefits should visit all alike as well.

In short, one knows the controlling law of the time.

However the Indiana Supreme Court took this presumption too far. They forgot, ignored, or simply did not know the presumption's limitation: contrary future judicial interpretations are not presumed to be known by man.

> "While the presumptions extend to the holdings of judicial decisions, persons are not presumed to know how the court will construe the law * * * or, that a particular law is or will be held by the courts to be, unconstitutional." 31A C.J.S. *Evidence* § 132(2), p. 260 (1964)

Thus one *cannot* predict (as opposed to "should have known") what will be reversed and by consequence be deemed a criminal act after the fact.

Even if we use this "should have known" standard which is the criteria now (and thus endows one with a knowledge of future law) Mr. Armstrong still would not have been able to see his court was wrong because nothing in Indiana's legal past hinted it was wrong: prior case law did not oppose *Honeycutt* it only supported it.

B. Prior Case Law Did Not Infer *Honeycutt* Was Wrong

While the Indiana Supreme Court asked Mr. Armstrong to know the future status of law (should have known) it forgot to consider its past.

The problems are *Nield v. State*, 677 N.E.2d 79 (Ind.Ct.App.1997) (App. 126) and *Runyon v. State*, 219 Ind. 352, 38 N.E.2d 235 (1941). (App. 116)

In *Nield*, we see qualifications to the word accident in the form of *collision*, i.e., impact, hitting, striking, contact, etc. for a strong inference that contact is an element.

> "In the context of vehicular *collisions*, we conclude that an accident means the entirety of an occurrence that results from a

> common initiating event * * * " *Nield v. State*, 677 N.E.2d 79, 81 (Ind.Ct.App.1997) (N.B. The statutes were still the same.)

More importantly, and more final, the Indiana Supreme Court bluntly states contact is an element and therefore already established the law and issue here.

> "There is sufficient evidence in the record to establish *every element* of the offense, that the appellant's car *struck* Russell, that she knew thereof, that she did not stop or aid the victim, nor disclose to any one that night any of the information required by the Statute." *Runyon*, 219 Ind. at 361

No contact, no crime.[4]

Why is this important? A person "may assume that the substantive law is what an average reading of the pertinent adjudicative cases as of a given time would indicate the law to be, or what a reasonably defensible interpretation of such cases would indicate." 31A C.J.S. *Evidence* § 132(1), p. 251 (1964) (citing FN93, *Bucuk v. Edward A. Zuzi Brass Foundry*, 139 A.2d 436, 451 (N.J. Super.Ct.App. Div. 1958)

A reasonable reading of *Honeycutt*, *Nield*, and *Runyon* would lead one to believe, and justifiably believe, that the law required contact for the crime.[5]

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[4] *In re Winship*, 397 U.S. 358 (1970) (A crime is made of elements not just some of them.)

[5] Parties may reasonably rely upon legal pronouncements even though they emanate from sources other than the United States Supreme Court. *United States v. Pelter*, 422 U.S. 531, 542, 45 L. Ed. 2d 374, 384 (1975).

Thus to say *Honeycutt* was wrong and Armstrong should have known this asks him to ignore over fifty (50) years of legal decisions from Indiana's highest court (presumably "the law of the state") on down (less so, but the law nonetheless).[6]

The consequence by default? Indiana asked Mr. Armstrong to know more than his court as apposed to it knowing more than him when the act occurred. Fair?

> "[I]t is unfair to require him to know the law when the Supreme Court was ignorant of it. It is, on the contrary, that the defendant is not criminally liable because the law at the time he acted was what the Supreme Court declared it to be; in short, his conduct conformed to the law." Jerome Hall, *General Principals of Criminal Law* p. 390 (2nd ed. 1960)
>
> *United States v. Mancuso*, 139 F.2d 90 (3rd Cir. 1943) (Citizens should not he held to a higher standard of knowledge than the judiciary * * * *)

No.

> "Our system of law has always endeavored to prevent even the probability of unfairness." *In*

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[6] "Decisions of a court of last resort are to be regarded as law and should be followed by inferior courts, whatever the view of the latter may be as to their correctness." 21 C.J.S. *Courts* § 151, p. 186 (1990) "Although the doctrine of stare decision does not apply with full force prior thereto, the decision of an intermediate appellate court is the law of the state of jurisdiction until such decision is reversed or overruled by the court of law resort." 21 C.J.S. *Courts* § 152, p. 187 (1990)

> *re Murchison*, 439 U.S. 133, 136, 99 L. Ed. 942, 946 (1955)

And thus a due process dilemma.

C. Like Ex Post Facto? Yes.

Was there anything to tell him he might be committing a criminal offense? No. From above we see that Indiana has traditionally held this offense occurs with the element of contact: *Runyon* (1941), *Nield* (1997), *Honeycutt* (2001).

Armstrong (2006) holds this is not so.

> We have therefore the incredible shrinking offense! An element was taken away.
>
> What more? An offense shrunk after the act to make a man criminal after the fact.
>
> Specters of ex post facto? You bet.
>
> > [T]hey may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime. . . . " *Calder v. Bull*, 3 U.S. 386, 388 (1798).
> >
> > "No bill of attainder or ex post facto law shall be passed." U.S. Const., art. I, § 9, 10

Although *Armstrong* deals with a judicial enlargement of a criminal statute after the fact and is therefore not covered by the ex post facto clause, the problems prompting *Calder* are still persuasive for an analogy that one can not be made a criminal post facto by statute or court.

> "If a state legislature is barred by the Ex Post Facto clause from passing such a law, it

> must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction." *Smith v. Cahoon*, 283 U.S. 533, 562-565 (1930)

And this brings us nicely to *Bouie*. (App. 94)

> "The fundamental principle that 'the required criminal law must have existed when the conduct in issue occurred must apply to bar retroactive criminal prohibitions emanating from courts as well as from legislatures. If a judicial construction of a criminal statute is unexpected and indefensible by reference to the law which has been expressed prior to the conduct in issue,' it must not be given retroactive effect." *Bouie v. City of Columbia*, 349 U.S. 347, 354 (1964)

> "An unforeseeable state-court construction of a criminal statute is applied retroactively to subject a person to criminal liability for past conduct, the effect is to deprive him of due process of law in the sense of fair warning that his contemplated conduct constitutes a crime." *Bouie*, 439 U.S. at 355

How does this all fit? Like *Bouie*, the law changed after the fact to make an innocent act criminal. By eliminating the element of contact or collision in *Armstrong* the Indiana Supreme Court changed the substantial nature of the offense.

In *Bouie* the case law held the same for years. Likewise, the substance of the offense in Indiana has been the same since 1941 (*Runyon*)

Like *Bouie*, the nature of the offense had been decided by the highest court on down. Indiana has *Runyon* (Indiana Supreme Court), *Nield* (Indiana Court of Appeal), and *Honeycutt* (Indiana Court of Appeals) consistently saying the same thing: contact, contact, contact.

The Indiana Supreme Court changes all that. One can now be taken to court and tried for something that was not an offense until later after the act. One can now be tried (and convicted) for what he was told was fine.

What does the Fifth Amendment think of that?

> "To those who deserve punishment who have outranged society and its laws – on such, an impartial justice inflicts the penalties for the violated laws of society, even to the tabling of life itself; but to those who are guiltless the law withholds its heavy hand." Patterson & Earl Conrad, *Scottsboro Boy*, p. 260-261 (1950) (Opinion of Judge James E. Horton granting a motion for new trial. Haywood); *Powell v. Alabama*, 287 U.S. 45 (1932) (The Scottsboro case)

It does not agree.

II. The Far-Flung Consequences of Leaving *Armstrong* Alone

If *Armstrong* is allowed to stand it will have far-reaching consequences for the people of Indiana.

The law as it stood in my State did not require one to know the future. It now does. One is presumed to know more than the current state of the law he is also deemed to know its future.

"Dog law" did not exist in Indiana.[7] It now does. In a society that makes men criminal by statute (written criminal rules he can at least see and know) this can not be. One must now know he is breaking the law *before* the Court decides to change it.

Once upon a time Indiana did not require one to know more than her courts and allowed people to be guided by her decisions. In essence the law acted like the carrot before the donkey. *Armstrong* changed all that and now places the donkey before the carrot. One must now correctly outguess his court every single time (lucky, precognitive), or be more knowledgeable than the court and know what it will do every single time (omniscient). A normal man can't do either.[8] Counsel must now look up the present law (possible) and somehow look up the future law (impossible) to make sure the present one is right (unworkable).

The law used to be that one could act in a lawful manner without fear his acts were criminal or that they would be rendered overnight. This no longer holds for the Hoosier. He can now expect to be imprisoned for what he

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[7] "It is the judges who make the common law. Do you know how they make it? Just as a man makes laws for his dog. When your dog does anything that you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog; and this is the way the judges make law for you and me. They won't tell a man beforehand what it is he should not do – they won't allow so much as allow of his being told: they lie by till he has done something which they say he should not have done, and then they hang him for it." 5 Jeremy Bentham, *The Works of Jeremy Bentham* 235 (1843)

[8] For that matter, neither can his lawyer. This is a problem. A statute is not vague and hence void if the common man can learn from the statute or his lawyer what it means. Note, 62 Harv.L.Rev. 77, 80 (1948)

was told was right as opposed to what he was told was wrong. Anyone see the problems? Judicial estoppel? Official misstatement? Can the Government now mislead and prosecute?[9] These questions used to mean something under fair warning. They no longer do.

In summation the Hoosier can no longer expect the rule of law, the law of the land, or due process of law to apply. We must never forget due process is as due process does.

> "No free man shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed; nor shall we go upon him, nor set upon him, but by the lawful judgment of his peers *or by the law of the land.*" Magna Carta art. 39 (1215)

> "No person shall * * * be deprived of life, liberty, or property, without due process of law * * * * *" U.S. Const. amend. V

If it no longer *does*, it no longer *is*. One can not have it both ways and still expect a rule of law as opposed to a rule of man.

What we now have in Indiana is a rule of man. Only this court can restore it to a rule of law.

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[9] *United States v. Clark*, 546 F.2d 1130 (5th Cir. 1977) (The Government can not both mislead and prosecute.)

CONCLUSION

The Court should grant a Writ of Certiorari in this matter and reverse the Indiana Supreme Court's decision in *Armstrong* concerning retroactive application.

Respectfully submitted,

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APPENDIX A

MICHAEL C. ARMSTRONG, Appellant
(Defendant below),
v.
STATE OF INDIANA, Appellee
(Plaintiff below).

No. 26S05-0606-CR-212

SUPREME COURT OF INDIANA

848 N.E.2d 1088; 2006 Ind. LEXIS 472

June 15, 2006, Decided
June 15, 2006, Filed

COUNSEL: FOR APPELLANT: John D. Clouse, Ivan A. **Arnaez**, Clouse Law Offices, Evansville, Indiana.

FOR APPELLEE: Steve Carter, Attorney General of Indiana; Ellen H. Meilaender, Deputy Attorney General, Indianapolis, Indiana.

JUDGES: Rucker, Justice. Shepard, C.J., and Dickson, Sullivan and Boehm, JJ., concur.

OPINION BY: Rucker

OPINION:

Rucker, Justice.

We hold today that a driver of a vehicle who leaves the scene of an accident resulting in injury or death may be held criminally responsible even if the driver's vehicle did not strike the injured or deceased party.

Facts and Procedural History

In the early evening hours of May 31, 2003 Michael C. Armstrong was driving his Ford Expedition along County Road 400 West in Gibson County. Craig Mobley sat in the passenger seat. At some point Mobley apparently opened the passenger door and jumped from the vehicle while it was in motion. Because Mobley did not move after hitting the roadway, Armstrong believed that he was injured. However, Armstrong did not stop at the scene nor did he use his cellular telephone to call for help. Rather, according to Armstrong, he "freaked out and did not know what to do and kept on driving and later called his father to tell him [what happened]." Appellant's App. at 23. In the meantime a property owner discovered Mobley lying motionless in his yard near the roadway and called 911. About an hour later Armstrong returned to the scene with his father. Police had already arrived along with emergency personnel. Armstrong gave police a statement recounting the events as set forth above. Mobley later died as a result of his injuries.

The State charged Armstrong with failure to stop after an accident resulting in death, a Class C felony. *See* Ind.Code § 9-26-1-1. Armstrong filed a motion to dismiss arguing that the statute did not apply to him because Mobley had not been struck by Armstrong's vehicle. After conducting a hearing the trial court entered an order denying the motion. At Armstrong's request the trial court certified its order for interlocutory appeal and the Court of Appeals accepted jurisdiction. Arguing that an earlier Court of Appeals opinion interpreting Indiana Code section 9-26-1-1 entitled him to relief, *see Honeycutt v. State,* 760 N.E.2d 648 (Ind. Ct. App. 2001), *trans. not sought,* Armstrong contended the trial court erred in

denying his motion to dismiss. The Court of Appeals interpreted Indiana Code section 9-26-1-1 differently and declined to follow *Honeycutt* but noted, "we acknowledge that our interpretation is so markedly different as to cause concerns about retroactive application to Armstrong." *Armstrong v. State*, 818 N.E.2d 93, 99 (Ind. Ct. App. 2004). Accordingly the Court of Appeals declared that although the trial court properly interpreted the statute, "this interpretation should not be applied to Armstrong retroactively. . . ." *Id.* The Court of Appeals thus reversed the judgment of the trial court and granted Armstrong's motion to dismiss. We now grant transfer and adopt that portion of the Court of Appeals opinion interpreting Indiana Code section 9-26-1-1. But because we have a different view on the question of retroactivity, we now affirm the judgment of the trial court.

Discussion

At the time of Armstrong's arrest and conviction Indiana Code section 9-26-1-1 provided in pertinent part:

> The driver of a vehicle *involved in an accident* that results in the injury or death of a person shall do the following:
>
> (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.
>
> (2) Immediately return to and remain at the scene of the accident until the driver does the following:

> (A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.
>
> (B) Upon request, exhibits the driver's license of the driver to the following:
>
> (i) *The person struck.*
>
> (ii) The driver or occupant of or person attending each vehicle involved in the accident.
>
> (C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(Emphases added).[1] A violation of this statute is a Class A misdemeanor but is elevated to a Class C felony if the accident involves the death of a person. I.C. § 9-26-1-8.

In *Honeycutt,* three brothers were driving home together after visiting several bars. They began to argue and at one point one of the brothers either fell or was pushed out of the moving vehicle and suffered a broken leg. The driving brother stopped the vehicle and the injured brother asked for help getting out of the street. The driving brother then pulled the injured brother out of the street and placed him in a nearby driveway. The driving brother tried to convince the injured brother to get back in the car to go home, but the injured brother refused, saying he needed an ambulance. Leaving the

[1] The statute was amended by Pub. L. No. 210-2005, § 50. However the amendment is not relevant here and has no effect upon our analysis.

injured brother there, the driving brother and the third brother left the scene and went to their home, which was three blocks away. The driving brother was later charged and convicted of failure to stop after an accident resulting in serious bodily injury. On review, the Court of Appeals placed significant emphasis upon the phrase "person struck" and held that "the legislature limits the scope of this statute to incidents involving a vehicle striking something that causes injury to someone, or a vehicle striking a person and causing injury." *Honeycutt,* 760 N.E.2d at 651. Because there was no evidence that the injured brother was struck by a vehicle, the court reversed the defendant's conviction, declaring that Indiana Code section 9-26-1-1 did not apply.

In the case before us the Court of Appeals focused not upon the phrase "person struck" but rather upon whether Armstrong was "involved in an accident." *Armstrong,* 818 N.E.2d at 98-99. As the court put it:

> The phrase "involved in an accident" and the word "accident" are not specifically defined in the statute. Undefined words in a statute are given their plain, ordinary, and usual meaning. "Accident" is broadly defined as "an unforeseen and unplanned event or circumstance" and "an unfortunate event resulting especially from carelessness or ignorance." "Accident" is also defined as an "unexpected and undesirable event, especially one resulting in damage or harm" and as "[a]n unforeseen incident." Mobley's sudden exit from Armstrong's moving vehicle was clearly an "unexpected and undesirable event" resulting in harm, and falls within the plain and ordinary meaning of the term accident. . . . [N]othing inherent in the term "accident" suggests that it encompasses only incidents where someone or

> something is struck. Upon closer examination, we believe the term "accident" is the bellwether for all of the duties imposed by Indiana Code section 9-26-1-1. . . . We therefore hold that *all* of the duties imposed by the statute apply to a "driver of a vehicle involved in an accident."

Id. at 97, 99 (citations omitted). We agree. The duties the statute imposes upon a driver are triggered regardless of whether the driver's vehicle struck anyone or anything. We therefore adopt that portion of the Court of Appeals opinion interpreting Indiana Code section 9-26-1-1. In so doing we disapprove the contrary interpretation of the statute announced in *Honeycutt*. As indicated earlier however we have a different view than our colleagues on the question of whether to apply this correct interpretation of the statute to the defendant in this case.

Armstrong suggests that he did not know that his actions were criminal because he could not have foreseen that *Honeycutt* may have been incorrectly decided. According to Armstrong, applying the current interpretation of the statute to his conduct "comes dangerously similar to our ban on ex post facto laws under the Federal and State Constitutions." Br. In Opposition To Pet. To Trans. at 1.

Article I of the United States Constitution provides that neither Congress nor any state may pass any ex post facto law. *See* U.S. Const. art. I, § 9; U.S. Const. art. I, § 10. An ex post facto law is one which applies retroactively to disadvantage an offender's substantial rights. *See Weaver v. Graham,* 450 U.S. 24, 29-30, 101 S. Ct. 960, 67 L. Ed. 2d 17 (1981). Over two hundred years ago, Justice Samuel Chase explained that "[t]he Legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in

future cases; they may command what is right, and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime. . . ." *Calder v. Bull,* 3 U.S. 386, 388, 1 L. Ed. 648, 3 Dall. 386 (1798). But, as is clear from the Constitutional text, "[t]he Ex Post Facto Clause is a limitation upon the powers of the Legislature, and does not of its own force apply to the Judicial Branch of government." *Marks v. United States,* 430 U.S. 188, 191, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977); *see also Rogers v. Tennessee,* 532 U.S. 451, 462, 121 S. Ct. 1693, 149 L. Ed. 2d 697 (2001) ("[T]he Ex Post Facto Clause does not apply to judicial decisionmaking."). Nonetheless, the prohibition on ex post facto laws embodies "one of the most widely held value-judgment[s] in the entire history of human thought," that is, that there should be no punishment without a law authorizing it. *Rogers,* 532 U.S. at 468 (Scalia, J., dissenting) (quotation omitted). This principle – "the notion that persons have a right to fair warning of that conduct which will give rise to criminal penalties" – "is fundamental to our concept of constitutional liberty." *Marks,* 430 U.S. at 191; *see also United States v. Harriss,* 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989 (1954); *Lanzetta v. New Jersey,* 306 U.S. 451, 453, 59 S. Ct. 618, 83 L. Ed. 888 (1939). Therefore, the Due Process Clause of the Fifth Amendment, made applicable to the states by the Fourteenth Amendment, protects offenders from judicial decisions that retroactively alter the import of a law to negatively affect the offender's rights without providing fair warning of that alteration. *See Marks,* 430 U.S. at 192.

Bouie v. City of Columbia first explained the similarity between ex post facto laws passed by a legislature and judicial decisions that, if applied retroactively, impact due process rights. *Bouie* involved a "sit-in" by civil rights

activists at a lunch counter in South Carolina. 378 U.S. 347, 348, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964). South Carolina's criminal trespass statute prohibited "[e]ntry upon the lands of another . . . after notice from the owner" prohibiting such entry. *Id.* at 349-50 (quoting S.C. Code § 16-386 (1952 & Cum. Supp. 1960)). However, the South Carolina Supreme Court "construed the statute to cover not only the act of entry on the premises of another after receiving notice not to enter, but also the act of remaining on the premises of another after receiving notice to leave." *Id.* at 350. The United States Supreme Court held that the South Carolina Supreme Court's "unforeseeable judicial enlargement of a criminal statute, applied retroactively, operated precisely like an ex post facto law" and therefore violated the petitioners' due process right of fair warning. *Id.* at 353. Just as legislatures are barred by the Ex Post Facto Clause from passing laws that unforeseeably enlarge criminal statutes, so too are courts "barred by the Due Process Clause from achieving precisely the same result by judicial construction." *Id.* at 353-54.

Marks v. United States clarified the due process implications of judicial constructions which unforeseeably expand the reach of statutes. Petitioners in that case were convicted of transporting "obscene materials." After petitioners' arrest, but before their trial, the Supreme Court expanded the definition of "obscenity" in *Miller v. California,* 413 U.S. 15, 93 S. Ct. 2607, 37 L. Ed. 2d 419 (1973). The trial court read jury instructions using the new, broader standard instead of the prior, narrower definition of obscenity that was in place at the time of the petitioners' activities. *Marks,* 430 U.S. at 190-91. The United States Supreme Court held that these jury instructions denied petitioners due process of law because, at the

time of their actions, they had "no fair warning that their products might be subjected to the [*Miller*] standards." *Id.* at 195. As such warning is "fundamental to our concept of constitutional liberty," it is "protected against judicial action by the Due Process Clause of the Fifth Amendment." *Id.* at 191-92. Therefore, the Court overturned the petitioners' convictions not because the jury instructions violated any specific category of ex post facto law delineated in *Calder,* but because of the fundamental right of all defendants to have "fair warning" that their contemplated conduct is illegal.

In *Rogers v. Tennessee,* the United States Supreme Court reasserted that the due process limitations upon retroactive application of judicial decisions do not "incorporate jot-for-jot the specific categories of *Calder,*" but rather apply "in accordance with the more basic and general principle of fair warning." 532 U.S. at 459. According to the Court, *Bouie's* "rationale rested on core due process concepts of notice, foreseeability, and, in particular, the right of fair warning as those concepts bear on the constitutionality of attaching criminal penalties to what previously had been innocent conduct. And we couched its holding squarely in terms of that established due process right. . . ." *Id.* (citation omitted); *see also United States v. Lanier,* 520 U.S. 259, 266, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997) ("[D]ue process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope. . . .").

In sum, the central question to be asked in deciding whether retroactive application of a judicial decision violates due process is whether the defendant had fair warning that his conduct was criminal at the time he

engaged in it. Armstrong essentially argues he had no such fair warning because *Honeycutt,* the only Indiana decision on point, declared that his conduct was not criminal.

The fair warning requirement does not rise and fall on Armstrong's reliance upon *Honeycutt.* First, *Honeycutt* was wrongly decided. And this is the first opportunity this Court has had to say as much because transfer was not sought in that case. "That courts have rendered decisions later deemed erroneous by higher authority does not entitle criminal defendants to the benefits of those mistakes. *Bouie* applies only to unpredictable shifts in the law, not to the resolution of uncertainty that marks any evolving legal system." *United States v. Burnom,* 27 F.3d 283, 284-85 (7th Cir. 1994) (internal citation omitted); *see also Hagan v. Caspari,* 50 F.3d 542, 547 (8th Cir. 1995) (questioning whether "a state supreme court's overruling of an intermediate appellate court decision ever can constitute a change in state law for due process purposes."). But more importantly, we are of the view that anyone reading Indiana Code section 9-26-1-1 could easily have concluded that *Honeycutt* was contrary to the statute's plain meaning. Focusing as it did upon "person struck," the opinion did not take into account that the statute required drivers "involved in an accident that results in the injury or death of a person" to take a variety of actions, only of one which involved the "person struck." For example Armstrong did not, as the statute required, "[i]mmediately stop the vehicle at the scene of the accident or as close to the accident as possible" or "[i]mmediately return to and remain at the scene of the accident until [he did] the following: (A) [give his] name and address and the registration number of the vehicle [he] was driving." Further,

over six decades ago, construing the predecessor to Indiana Code section 9-26-1-1, this Court declared: "[t]he purpose of the statute is to provide prompt aid for persons who are injured or whose property is damaged and to sufficiently establish the identity of the parties so that they and police authorities may know with whom to deal in matters growing out of the accident." *Runyon v. State,* 219 Ind. 352, 38 N.E.2d 235, 237 (1941); *see also Micinski v. State,* 487 N.E.2d 150, 152-53 (Ind. 1986) ("We now make explicit what was assumed in *Runyon,* that knowledge of the fact that an injury accident has occurred is a necessary element of the proof in a prosecution under Ind.Code § 9-4-1-40."). As the Court of Appeals correctly pointed out, "[l]imiting 'accidents' to only those incidents where a person or vehicle is struck undercuts these purposes, as the facts of this case clearly demonstrate." *Armstrong,* 818 N.E.2d at 97.

Considering the wording of the statute along with this Court's assessment of the statute's predecessor, Armstrong had fair warning that his conduct – failing to stop after an accident resulting in death – was criminal. Therefore the Due Process Clause of the Fifth Amendment does not bar Armstrong's prosecution for this offense.

We affirm the judgment of the trial court.

Shepard, C.J., and Dickson, Sullivan and Boehm, JJ., concur.

APPENDIX B

MICHAEL C. ARMSTRONG, Appellant-Defendant,
vs. STATE OF INDIANA, Appellee-Plaintiff.

No. 26A05-0401-CR-12

COURT OF APPEALS OF INDIANA, FIFTH DISTRICT

818 N.E.2d 93; 2004 Ind. App. LEXIS 2316

November 23, 2004, Filed

COUNSEL: FOR APPELLANT: JOHN D. CLOUSE, IVAN A. ARNAEZ, Clouse Law Offices, Evansville, Indiana.

FOR APPELLEE: STEVE CARTER, Attorney General of Indiana, ELLEN H. MEILAENDER, Deputy Attorney General, Indianapolis, Indiana.

JUDGES: MATHIAS, Judge,[1] BARNES, J., and CRONE, J., concur.

OPINION BY: MATHIAS

OPINION:

MATHIAS, Judge

Michael C. Armstrong ("Armstrong") was charged in the Gibson Superior Court with failure to stop after an accident resulting in death, a Class C felony.[2] Armstrong moved to dismiss the charge. Following a hearing, the trial court denied the motion to dismiss. Thereafter, the trial court certified the matter for interlocutory appeal, and we

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[1] We heard oral argument in this case at the Indiana University School of Law-Indianapolis on September 20, 2004. We extend our appreciation to the students, faculty, and staff for their interest and hospitality and to counsel for their written and oral presentations.

[2] Ind. Code § 9-26-1-1 (2004); Ind. Code § 9-26-1-8(a)(2) (2004).

accepted jurisdiction pursuant to Appellate Rule 14(B). Armstrong raises one issue: whether he was involved in an accident for purposes of Indiana Code section 9-26-1-1. Concluding that Armstrong was involved in an accident, but that our interpretation of the statute should not be applied retroactively to Armstrong, we reverse.

Facts and Procedural History

On May 31, 2003, Craig Mobley ("Mobley") was a passenger in a 1998 Ford Expedition driven by Armstrong. As the two headed south on County Road 400W in Fort Branch, Indiana, Mobley jumped out of the vehicle while it was moving. Armstrong immediately believed that Mobley had been injured because he did not move once he hit the ground. However, Armstrong did not stop at the scene, nor did he use his cell phone to call for help. Instead, he continued driving south.

A short time later, the property owner discovered Mobley lying motionless in his yard near the road and called 911. Approximately one hour after emergency responders had arrived at the scene, Armstrong returned with his father and informed police that Mobley had jumped out of his vehicle while it was in motion. Mobley later died as a result of his injuries.

On June 16, 2003, the State charged Armstrong with failure to stop after an accident resulting in death, a Class C felony. On October 15, 2003, Armstrong filed a motion to dismiss, citing *Honeycutt v. State*, 760 N.E.2d 648 (Ind. Ct. App. 2001), and arguing that Indiana Code section 9-26-1-1 did not apply because Mobley had not been struck by Armstrong's vehicle. The trial court held a hearing on the motion on November 14, 2003. On December 17, 2003, the

trial court issued a detailed order denying Armstrong's motion to dismiss. The trial court certified the order for interlocutory appeal and this court accepted jurisdiction on February 20, 2004.

Discussion and Decision

Armstrong argues that the trial court improperly denied his motion to dismiss the charge against him because Indiana Code section 9-26-1-1 does not apply. Specifically, he argues that he was not "involved in an accident" for purposes of the statute because his vehicle did not strike Mobley.

> The interpretation of a statute is a question of law which we review de novo. Under a de novo review standard, we owe no deference to the trial court's legal conclusions. If the language of a statute is clear and unambiguous, it is not subject to judicial interpretation. However, when the language is susceptible to more than one construction, we must construe the statute in accord with the apparent legislative intent.

Woodward v. State, 798 N.E.2d 260, 262 (Ind. Ct. App. 2003), *trans. denied* (quoting *State v. Gibbs,* 769 N.E.2d 594, 596 (Ind. Ct. App. 2002), *trans. denied*).

The best evidence of legislative intent is the language of the statute, giving all words their plain and ordinary meaning unless otherwise indicated by the statute. *Brown v. State,* 790 N.E.2d 1061, 1063-64 (Ind. Ct. App. 2003). We will presume that the legislature intended the language used in the statute to be applied logically and not to bring about an unjust or absurd result. *Id.* at 1064. We must also strictly construe penal statutes against the State to

avoid enlarging them beyond the fair meaning of the language used. *Hatcher v. State,* 762 N.E.2d 170, 172-73 (Ind. Ct. App. 2002), *trans. denied.* Though penal laws are to receive a strict construction, they are not to be construed so strictly as to defeat the obvious or expressed intent of the legislature. *Fuller v. State,* 752 N.E.2d 235, 238 (Ind. Ct. App. 2001).

Undefined words in a statute are given their plain, ordinary, and usual meaning. Ind. Code § 1-1-4-1(1) (2000); *State v. D.M.Z.,* 674 N.E.2d 585, 588 (Ind. Ct. App. 1996), *trans. denied.* In determining the plain and ordinary meaning of a statutory term, courts may use English language dictionaries as well as consider the relationship with other words and phrases. *D.M.Z.,* 674 N.E.2d at 588. Statutes are examined and interpreted as a whole and the language itself is scrutinized, including the grammatical structure of the clause or sentence at issue. *Clifft v. Ind. Dep't of State Revenue,* 660 N.E.2d 310, 316 (Ind. 1995). Within this analysis, we give words their common and ordinary meaning, without "overemphasizing a strict literal or selective reading of individual words." *Id.* (citations omitted).

Indiana Code section 9-26-1-1 provides as follows:

> The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:
>
> (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

Ind. Code § 9-26-1-1 (2004).

Armstrong argues that he was not "involved in an accident" because his vehicle did not strike Mobley. The

phrase "involved in an accident" and the word "accident" are not specifically defined in the statute. Undefined words in a statute are given their plain, ordinary, and usual meaning. Ind. Code § 1-1-4-1(1) (2000). "Accident" is broadly defined as "an unforeseen and unplanned event or circumstance" and "an unfortunate event resulting especially from carelessness or ignorance." *See* Merriam Webster Online Dictionary *available at* http://www.m-w.com (last visited October 28, 2004). "Accident" is also defined as an "unexpected and undesirable event, especially one resulting in damage or harm" and as "[a]n unforeseen incident." *See* The American Heritage Dictionary of the English Language (4th Ed. 2000) *available at* http://www.bartelby.com (last visited October 28, 2004). Mobley's sudden exit from Armstrong's moving vehicle was clearly an "unexpected and undesirable event" resulting in harm, and falls within the plain and ordinary meaning of the term accident.

In addition, we note that in another chapter of Title 9, the legislature defined "fatal accident" in the context of implied consent laws as "an accident, a collision, or other occurrence that involves at least one [] vehicle" and results in death or bodily injury that gives a law enforcement officer reason to believe that the death of at least one person is imminent. Ind. Code § 9-30-7-1(b) (2004). This definition clearly contemplates that an incident other than a collision could be a "fatal accident" for purposes of that statute.

In interpreting the predecessor of Indiana Code section 9-26-1-1, our supreme court concluded that the purpose of the statute is to provide prompt aid for persons who are injured or whose property is damaged and to sufficiently establish the identity of the parties so that

they and police authorities may know with whom to deal in matters growing out of the accident. *Runyon v. State,* 219 Ind. 352, 357, 38 N.E.2d 235, 237 (1941). Limiting "accidents" to only those incidents where a person or vehicle is struck undercuts these purposes, as the facts of this case clearly demonstrate.

We also observe that a driver's knowledge of the fact that an accident with injury has occurred is a necessary element of the proof in a prosecution for failure to stop. *State v. Gradison,* 758 N.E.2d 1008, 1011 (Ind. Ct. App. 2001) (citing *Micinski v. State,* 487 N.E.2d 150, 152-53 (Ind. 1986) (construing substantially similar predecessor statute)). However, the driver need not have actual knowledge that an accident has resulted in injury to be convicted under the statute. *Id.* "Where conditions were such that the driver should have known that an accident occurred or should have reasonably anticipated that the accident resulted in injury to a person, the requisite knowledge is present." *Id.* (quoting *Micinski,* 487 N.E.2d at 153). Here, Armstrong admitted to police officers at the scene that he believed Mobley was injured because he did not move once he hit the ground.

Other courts in other jurisdictions have come to the same conclusion when interpreting substantially similar statutes. These courts have held that, for purposes of failure to stop or "hit and run" statutes, an accident occurred in circumstances other than a collision between the driver's vehicle and another vehicle or person. *See Wylie v. State,* 797 P.2d 651, 658 (Alaska Ct. App. 1990) (driver whose wife intentionally jumped from his moving vehicle was involved in accident); *State v. Rodgers,* 184 Ariz. 378, 909 P.2d 445, 448 (Ariz. Ct. App. 1995) (driver whose passenger deliberately jumped from his moving car

was involved in an accident); *State v. Carpenter,* 334 N.W.2d 137, 138-40 (Iowa 1983) (driver whose intoxicated girlfriend jumped from his moving pickup truck was involved in an accident); *Comstock v. State,* 82 Md. App. 744, 573 A.2d 117, 122 (Md. Ct. Spec. App. 1990) (driver was involved in an accident where his sudden lane change caused another driver to swerve and collide with oncoming traffic); *State v. Slocum,* 112 A.D.2d 641, 492 N.Y.S.2d 159, 160 (App. Div. 1985) (driver whose passenger jumped from the moving vehicle and died as a result was involved in an accident); *State v. Cameron,* 1999 SD 70, 596 N.W.2d 49, 54 (S.D. 1999) (single vehicle rollover resulting in injury to passengers was an accident); *Sheldon v. State,* 100 S.W.3d 497, 503 (Tex. Crim. App. 2003) (driver whose passenger intentionally jumped from moving vehicle was involved in an accident); *Smith v. Commonwealth,* 8 Va. App. 109, 379 S.E.2d 374, 377, 5 Va. Law Rep. 2164 (Va. Ct. App. 1989) (driver was involved in an accident when three passengers riding on a truck's bumper fell from the truck as it was moving); *State v. Silva,* 106 Wn. App. 586, 24 P.3d 477, 482 (Wash. Ct. App. 2001) (driver was involved in an accident within meaning of statute when a police officer was injured while jumping free of his moving vehicle after the officer reached in to turn off the ignition).

Yet Armstrong directs us to *Honeycutt v. State,* where a panel of this court, including this writer, determined that the scope of Indiana Code section 9-26-1-1 should be limited to "incidents involving a vehicle striking something that causes injury to someone, or a vehicle striking a person and causing injury." 760 N.E.2d at 651. In *Honeycutt,* three brothers were driving home together after visiting several bars. *Id.* at 649. The three began to argue, and at one point, one of the brothers fell or was

pushed out of the moving vehicle and suffered a broken leg. *Id.* The driver stopped the vehicle and the injured brother asked the driver for help getting out of the street. The driver then pulled the injured brother out of the street and placed him in a nearby driveway. *Id.* The injured brother did not request further assistance. *Id.* The driver tried to convince the injured brother to get back in the car to go home, but the injured brother refused, saying that he needed an ambulance. *Id.* The driver and the third brother then left the injured brother there, and drove the remaining three blocks to their home. *Id.* Upon these facts, *Honeycutt* held that there was insufficient evidence to support the driver's conviction of failure to stop after an accident resulting in serious injury.

In so holding, *Honeycutt* placed significant emphasis on the fact that the statute includes the phrase "person struck." Ind. Code § 9-26-1-1(2)(B)(i). However, we note that the phrase "person struck" appears only in subsection (2)(B), which requires a driver involved in an accident to provide certain identification information when requested. As discussed above, nothing inherent in the term "accident" suggests that it encompasses only incidents where someone or something is struck. Upon closer examination, we believe the term "accident" is the bellwether for all of the duties imposed by Indiana Code section 9-26-1-1, and includes single vehicle incidents involving passengers who fall, jump, or are pushed from moving vehicles and suffer injuries as a result. We therefore hold that *all* of the duties imposed by the statute apply to a "driver of a vehicle involved in an accident." With our interpretation, we respectfully decline to follow *Honeycutt*.

In declining to follow *Honeycutt,* we acknowledge that our interpretation is so markedly different as to cause

concerns about retroactive application to Armstrong. Constitutional provisions against ex post facto laws apply only to enactments by legislative bodies. *Bryant v. State,* 446 N.E.2d 364, 365 (Ind. Ct. App. 1983) (citing *Marks v. United States,* 430 U.S. 188, 192, 51 L. Ed. 2d 260, 97 S. Ct. 990 (1977), *Sumpter v. State,* 264 Ind. 117, 125, 340 N.E.2d 764, 770 (1976)). However, this court has recognized that the principle underlying the prohibition of ex post facto laws "may limit the retroactive application of judicial decisions interpreting statutes." *Id.* The fundamental concept underlying the prohibition of retroactivity, whether by way of the due process clause or the prohibition against ex post facto laws, is that of fair notice to the defendant at the time he acts that his behavior is deemed criminal. *Id.* at 365-66. "If a judicial construction of a criminal statute is unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue, [the construction] must not be given retroactive effect." *Bouie v. City of Columbia,* 378 U.S. 347, 354, 12 L. Ed. 2d 894, 84 S. Ct. 1697 (1964) (internal quotation marks omitted).

We note that transfer was not sought in *Honeycutt.* Thus, the law expressed prior to the conduct at issue here included no word from our supreme court indicating that, for purposes of the failure-to-stop statute, an "accident" requires that there be a "person struck." However, we believe that our interpretation, while correct, is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue." *Id.* We therefore decline to apply our interpretation to Armstrong.

For all these reasons, when Mobley jumped from Armstrong's moving vehicle and was injured as a result, Armstrong was involved in an accident for purposes of

Indiana Code section 9-26-1-1, and the duties under that statute were triggered. Armstrong failed to immediately stop and remain at the scene as required by Indiana Code section 9-26-1-1(1) & (2). While the trial court properly denied Armstrong's motion to dismiss under our interpretation of Indiana Code section 9-26-1-1, this interpretation should not be applied to Armstrong retroactively, and we reverse the trial court and grant Armstrong's motion to dismiss under *Honeycutt*.

Reversed.

BARNES, J., and CRONE, J., concur.

APPENDIX C

IN THE

COURT OF APPEALS OF INDIANA

MICHAEL ARMSTRONG, Appellant,	)	CAUSE NO. 26A05-0401-CR-12
VS.	)	
STATE OF INDIANA, Appellee.	)	

ORDER

(Filed Feb. 20, 2004)

The Appellant, by counsel, has filed a Verified Motion to Accept Jurisdiction Over Interlocutory Appeal.

Having reviewed the matter, the Court finds that the issues to be raised in the Appellant's appeal involve substantial questions of law, the early determination of which would promote a more orderly disposition of the case; that the Appellant's remedy by appeal after judgment would be inadequate; that the trial court has certified its order for appeal; that the Appellant's said Motion should be granted and this Court should accept jurisdiction of this appeal.

IT IS THEREFORE ORDERED that the Appellant's Motion to Accept Jurisdiction Over Interlocutory Appeal is GRANTED, and this Court now accepts jurisdiction of this appeal pursuant to Appellate Rule 14(B).

ORDERED this 20th day of February, 2004.

/s/ John T. Sharpnack
Acting Chief Judge

May, Vaidik, J.J., Hoffman, Sr. J., concur

APPENDIX D

STATE OF INDIANA, COUNTY OF GIBSON	) SS:	IN THE GIBSON SUPERIOR COURT ANNUAL TERM
STATE OF INDIANA VS. MICHAEL ARMSTRONG		CAUSE NO. 26D01-0306-FC-00008

ORDER OF CERTIFICATION FOR INTERLOCUTORY APPEAL

(Filed Jan. 05, 2004)

Comes now the Court and being duly advised GRANTS Defendant's Petition for Certification of Interlocutory Appeal. The Court finds that there is a substantial question of law, the early determination of which will promote a more orderly disposition of the case. The Court further finds that a remedy upon appeal will be inadequate as the Defendant may suffer incarceration pending reversal on appeal.

Therefore, the Court hereby certifies for appeal its Court Order Denying Defendant's Motion to Dismiss dated and entered December 17, 2003.

SO ORDERED THIS 5TH DAY OF JANUARY, 2004.

/s/ Earl G. Penrod
EARL G. PENROD
JUDGE, GIBSON
SUPERIOR COURT

APPENDIX E

STATE OF INDIANA,
COUNTY OF GIBSON

IN THE GIBSON
SUPERIOR COURT
ANNUAL TERM

STATE OF INDIANA
VS.
MICHAEL ARMSTRONG

CAUSE NO.
26D01-0306-FC-00008

COURT ORDER DENYING DEFENDANT'S MOTION TO DISMISS

(Filed Dec. 17, 2003)

Comes now the Court and being duly advised, DENIES Defendant's Motion to Dismiss filed October 15, 2003 and supplemented October 29, 2003.

The Defendant, Michael C. Armstrong, has been charged with violating Indiana Code 9-26-1-1, the criminal statute which imposes various duties on a driver of a vehicle involved in an accident resulting in injury or death. In a nutshell, Armstrong argues that the charge "leaving the scene of an accident" must be dismissed because on the date in question, he was not a driver involved in an "accident" as that term has been defined for purposes of I.C. 9-26-1-1 by the Indiana Court of Appeals in the Case of *Honeycutt v. State*, 760 N.E.2d 648 (Ind.Ct.App.2001).

It is conceded that the *Honeycutt* case initially appears to offer compelling support for Armstrong's position and this Court does not cavalierly ignore or disregard relevant precedent for the Court of Appeals or the Supreme Court. However, the Court finds, with due respect

to the Court of Appeals, that even if the *Honeycutt* case is a correct statement of the law as it applies to the facts in that case, the facts in the present case are distinguishable and, consequently, lead to a different conclusion.

In *Honeycutt*, Jonathan Honeycutt was driving a vehicle in which his two brothers were passengers. After visiting a couple of bars, the three brothers, who lived together in the same house, got into an argument as they were driving down the road. Samuel asked Jonathan to stop and let Samuel exit the car but Jonathan refused. As the car was traveling approximately 40 miles per hour, Samuel exited the car, apparently being pushed out by the third brother, Darrel. Jonathan then turned around and positioned the vehicle over Samuel as he lay in the street and revved the engine for approximately 15 seconds. Jonathan then pulled Samuel out of the street and placed him in a driveway. Jonathan directed Samuel to get back into the car and go home but Samuel refused to do so. Instead, Samuel indicated that he could not go home and that he needed an ambulance. Jonathan got back into the vehicle, again positioned it over Samuel and revved the engine for approximately 15 seconds before driving off. Ten to twenty minutes later the police knocked on the door and were told by Samuel that his brother, Jon, was driving the car that ran him over. Jonathan was charged and convicted of leaving the scene of an accident resulting in serious bodily injury.

The Court of Appeals reversed the conviction finding that the legislature intended to limit I.C. 9-26-1-1 to "incidents involving a vehicle striking something that causes injury to someone or a vehicle striking a person and causing injury." In reaching its conclusion, the Court of Appeals noted:

> In *State v. Eilers*, 697 N.E.2d 969, 970-971 (Ind.Ct.App.1998), this court held: When interpreting a statue the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself. *Saurer v. Board of Zoning Appeals*, 629 N.E.2d 893, 897 (Ind.Ct.App.1994). . . . Although it is true that we must look to legislative intent when construing a statute with ambiguous language, "if the language of a statute is clear and unambiguous it is not subject to judicial interpretation." *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind.Ct.App.1995), *reh'g denied, transfer denied.*

The Court of Appeals found that because the language of I.C. 9-26-1-1 is clear and unambiguous, there is no need to look beyond the statute for legislative intent. The Court set forth the dictionary definition of "struck" as "to collide with" or "to move into violent contact" and found that I.C. 9-26-1-1 is limited to accidents in which a person or a vehicle is struck. In essence, the Court of Appeals found that the plain and ordinary definition of "stuck" is an essential element of the term "accident" for purposes of I.C. 9-26-1-1. Because the evidence did not show that Jonathan was driving a vehicle that struck Samuel, Jonathan has not been involved in an accident and could be guilty of violating the statute.

With due deference to the decision of the Court of Appeals on the specific facts presented in *Honeycutt*, it is submitted that the language of I.C. 9-26-1-1 is not clear and unambiguous and, therefore, must be interpreted by the court, with reference to the intention and purpose of the legislature in enacting the law.

As noted above, words and phrases in a statute are to be given their ordinary meaning unless a contrary purpose is shown by the statute. Because the statute does not define the words used in I.C. 9-26-1-1, they are to be given their ordinary meaning. The statute mandates that the driver of a vehicle involved in an ***ACCIDENT*** that results in the injury to or death of a person shall do certain things. "Accident" is defined in Merriam-Webster's Collegiate Dictionary, Tenth Edition as follows: "1. an unforeseen and unplanned event or circumstance; 2. a. an unfortunate event resulting especially from carelessness or ignorance; 2. c. an unexpected happening causing the loss or injury which is not due to any fault or misconduct on the part of the person injured but for which legal relief may be sought."

Clearly, there is nothing in the plain and ordinary meaning of the word "accident" that necessarily limits the term to those circumstances in which a person or a vehicle had been struck. Therefore, such limitation, if it exits, must be found in the remaining language and context of the statute.

"Person struck" appears in I.C. 9-26-1-1(2)(B)(I) which requires a driver involved in an accident to exhibit a driver's license in limited circumstances. Although there is no question that the plain and ordinary meaning of the term "struck" is as the Court of Appeals noted in *Honeycutt*, it does not *necessarily* follow that there is no "accident" for purposes of the statute unless a vehicle or a person has been struck. In fact, in determining the applicability of the statute, there appears no compelling reason to provide the plain and ordinary meaning of "struck" since the key term that must be defined are "accident" to a lesser degree, "involved".

Exhibiting a driver's license is required upon a request by the person struck, or the driver (or occupant) of, or person attending each vehicle involved in the accident. If no person is struck, or if no other vehicle is involved in the accident, OR if no request is made, I.C. 9-26-1-1(2)(B) is inapplicable. However, even if I.C. 9-26-1-1(2)(B) does not apply, a driver involved in an accident is obligated to comply with the remaining provisions of I.C. 9-26-1-1.

It is plausible to suggest that (2)(B)(i) and (2)(B)(ii) were intended only to list those who are entitled to see the driver's license of a driver involved in an accident and were not intended to describe, define or limit what is an accident. Therefore, from the language alone, it is not clear and unambiguous that there can be no accident for purposes of I.C. 9-26-1-1 unless there is a collision. In other words, even though the legislature may have intended such "physical impact rule" the ordinary and plain language of the statute does not clearly and unambiguously lead to the conclusion that an accident requires a vehicle striking another vehicle or a person. Because the language of the statute is not clear and unambiguous, it is encumbered upon the court to interpret and construe the statute.

Although not controlling in this case, it is significant that the legislature has defined the term "fatal accident" for purposes of the implied consent laws. In that statute, the legislature did not equate "accident" with something being "struck". Instead, I.C. 9-30-7-1 provides: "As used in this chapter, 'fatal accident' means an accident, a collision, or other occurrence that involves at least one vehicle and that results in death."

In a 1941 case, Runyon v. State, 38 N.E.2d 235 (Ind.1941), the Indiana Supreme Court held that the purpose of the leaving the scene statute (the statute in effect in 1941 contained much of the same language as the present statute) "is to provide prompt aid for persons who are injured or whose property is damaged and to sufficiently establish the identity of the parties so that they and police authorities may know with whom to deal in matters growing out of the accident."

In summary, the purpose and intent of the legislature in enacting a "leaving the scene statue" is to provide aid for persons who are injured and to establish driver identity. In view of the legislative purpose of the statute, it can scarcely be argued that the Indiana General Assembly would intend to limit accidents to those in which a vehicle or a person has been struck since such a limitation does nothing to advance the dual purpose of aiding the injured and establishing identity. Indeed, it is arguable that such a limitation is counterproductive to the goals of the statue.

Again, although not controlling, decisions from other jurisdictions are of assistance. For example, in the case of *State of Washington v. Hughes*, 907 P.2d 336 (Wash.App.1995) the Court of Appeals for the State of Washington found that there does not have to be physical contact between the driver's vehicle and another vehicle or person before the driver is obligated to comply with the "hit and run" statute. (In *Hughes*, a fatality occurred during a drag race and even though the vehicles never came into contact with each other, the surviving driver's conviction for failing to stop was upheld.)

In *State of Arizona v. Rogers*, 909 P.2d 445 (Ariz.App.1996) the Arizona Court of Appeals found that

the defendant/driver was involved in an accident for purposes of leaving the scene statute when a passenger intentionally jumped from the moving vehicle which was being operated by the defendant. The Arizona Court of Appeals quoted with approval the Alaska Court of Appeals, which in the case of *Wylie v. State*, 797 P.2d 651 (Alaska Ct.App.1990) "defined a vehicular 'accident' as any incident in which someone suffers injury or death." In *Rogers*, the Arizona Court of Appeals held: "When a passenger jumps from a moving vehicle and as a result suffers injury or death, the motorist is obligated to stop and render assistance and notify the proper authorities. In our view, this is true whether or not the driver was warned of the passenger's desire to leave the vehicle. In this way, liability will be more readily determined and further injury prevented." The Arizona leaving the scene statute is very similar to that of Indiana.

In *State of Iowa v. Carpenter*, 334 N.W.2d 137 (Iowa, 1983) the Iowa Supreme Court upheld the Iowa leaving the scene statute (also very similar to the one in Indiana) against a defense challenge that the terms "accident" and "involved" were unconstitutionally vague. The Court quoted from one of its earlier decisions, *State v. Sebren*, 185 N.W.2d 771 (Iowa 1971) as follows: "We agree with the State's suggestion that the manifest intent of section 321.261 [Iowa leaving the scene statute] is to prevent a motorist involved in personal injury or property damage accidents from evading liability, civil or criminal, as a result of such accident, by escaping before his identity can be established. Further, it is clear that the legislature intended to protect persons from distress or danger from additional mutilation and exposure, for want of proper treatment." The Court in *Carpenter*, went on to note that

"the meaning of the statutory terms must be viewed in that light. When so viewed, the driver of a moving vehicle from which a person jumps and is injured should have no doubt that he is the driver of a vehicle 'involved' in an 'accident' within the meaning of sections 321.261 and 321.263. The statute does not require a collision between the driver's vehicle and another vehicle or person."

As pointed out by the State in the present case during oral argument on the Motion to Dismiss, the Court of Appeals of Texas also has held that a driver had been involved in an "accident" when a passenger jumped from the vehicle and later died. *Sheldon v. State of Texas*, 100 S.W.3d 497 (Tex. App. 2003). In *Sheldon*, the Texas Court of Appeals summarizes cases from numerous jurisdictions which have reached the same conclusion. In addition to those cases outlined above, the *Sheldon* court cites the Virginia Court of Appeals decision in *Smith v. Virginia*, 379 S.E.2d 374 (Va. App. 1989); a New York case, *People v. Slocum*, 112 A.2d 641, 492 N.Y.S.2d 159, 160 (N.Y. 1985); and a California case, *People v. Kroncke*, 70 Cal. App. 4th 1535, 83 Cal. Repr.2d 493, 495-96 (Cal. App. 1999).

Although cases from other jurisdictions are not binding on Indiana Courts, they can be instructive and of assistance in construing Indiana law when the provisions of the law and the facts are similar. Although all of the facts in the present case are not known with certainty at this pre-trial stage, the facts that have been alleged clearly distinguish this case from *Honeycutt*.

In the present case, the State alleges that Armstrong was driving a vehicle on May 31, 2003 and was involved in an accident that resulted in the death of Craig R. Mobley, a passenger in the Armstrong Vehicle. The State further

alleges that Armstrong failed to stop at the scene as required by statute and give notice of the accident to a law enforcement agency. In the affidavit of Probable Cause and other supporting documentation, the State alleges that emergency personnel arrived at the scene in response to a call from a neighbor who found Mobley lying in the grass on the neighbor's property.

Approximately one hour after emergency personnel arrived on the scene Armstrong returned (with his father) and advised the police that he had been the driver of the Ford Expedition in which Mobley was a passenger. Armstrong stated that as he was driving south on County Road 400 W, Mobley jumped out of the moving vehicle. Armstrong further indicated that although he believed Mobley was hurt since he was not moving, Armstrong did not stop or return to the scene because he didn't know what to do. He then contacted his father who brought Armstrong back to the scene. Mobley died as a result of the injuries sustained in the fall from the moving vehicle being driven by Armstrong.

In the *Honeycutt* case, three brothers who resided together were arguing as they rode down the road after having visited a few bars. While the car was in motion, one brother exited the vehicle (apparently, pushed out by the third, non-driving brother) sustaining injuries that were not life threatening. The driver stopped the car at the scene and talked to and checked on the victim, albeit in an inappropriate fashion. The brothers continued to bicker until the driver left the scene. He was contacted by the police about 20 minutes later at home.

Significantly, because the driver and vietim were brothers (and the victim survived) there was no possibility

that the driver would be able to escape before his identity could be established. Further, even though the driver did not contact the police, he did stop at the scene and at least check on his brother. Also, the victim and the driver were accompanied by a third brother who was, arguably, in a position to render additional assistance or aid so that the victim would not suffer further mutilation of injury. The presence of the third brother also made it less likely that the driver would be able to avoid responsibility for his conduct by failing to contact law enforcement concerning the incident.

Under those facts, the Court of Appeals found that I.C. 9-26-1-1 did not apply. However, under the facts alleged in the present case, I.C. 9-26-1-1 is applicable and the Motion to Dismiss is hereby DENIED.

SO ORDERED THIS 17TH DAY OF DECEMBER, 2003.

/s/ Earl G. Penrod
JUDGE EARL G. PENROD
GIBSON SUPERIOR COURT

APPENDIX F

U.S. Const. amend V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

APPENDIX G

Indiana Code § 9-26-1-1 Duties of driver of vehicle involved in accident resulting in injury or death

Sec. 1 The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:

(1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

As added by P.L.2-1991, SEC. 14.

APPENDIX H

Indiana Code § 9-26-1-8 Failure to stop and remain at scene of accident resulting in injury or death; failure of driver to fulfill duties following collisions with unattended vehicles or other property; classification of violations

Sec. 8. (a) A person who fails to stop or comply with section 1(1) or 1(2) of this chapter after causing injury to a person commits a Class A misdemeanor. However, the offense is:

(1) a Class D felony if:

(A) the accident involves serious bodily injury to a person; or

(B) within the five (5) years preceding the commission of the offense, the person had a previous conviction of any of the offenses listed in IC 9-30-10-4(a); and

(2) a Class C felony if the accident involves the death of a person.

(b) A person who fails to stop or comply with section 3 or 4 of this chapter after causing damage to the property of another person commits a Class B misdemeanor.

As amended by P.L.97-1996, SEC.2 and P.L.96-1996, SEC.2.

APPENDIX I

IN THE

COURT OF APPEAL OF INDIANA

Cause No. ___

MICHAEL ARMSTRONG, Appellant-Defendant VS. STATE OF INDIANA, Appellee-Plaintiff	An Appeal from the Gibson Superior Court Lower Court Cause No. 26D01-0306-FC-00008

VERIFIED MOTION TO ACCEPT JURISDICTION OVER INTERLOCUTORY APPEAL

Comes now the Defendant, Michael Armstrong, by counsel, John D. Clouse and Ivan A. Arnaez, and moves the Court of Appeals pursuant to Ind. Appellate Rule 14(B)(2) to exercise it discretion by accepting jurisdiction over this appeal.

1. On December 17, 2003, the Gibson Superior Court denied the Defendant's Motion for Dismissal.

2. The Trial Court filed its interlocutory order December 17, 2003. Attached as Exhibit "A"

3. The Defendant filed a motion for certification of interlocutory order December 23, 2003. Attached as Exhibit "B"

4. The Trial Court certified its interlocutory order on Jan 5, 2004. Attached as Exhibit "C"

5. The Court of Appeals should accept jurisdiction over this interlocutory appeal because there is a substantial question of law that must be addressed if the defendant is to have a fair trial complying with Due Process and Due Course of Law.

A recent Indiana Court of Appeals case, *Honeycutt v. State*, 760 N.E.2d 648 (Ind. App. 2001), indicates that the legal duty to stop after an accident under I.C. 9-26-1-1 is *triggered* when a driver's car *hits* a person or thing.

The Trial Court denied the Defendant's Motion to Dismiss stating this is not so. It appears to make the distinction between mere injury or death as apposed to whether there was contact between the defendant's car and a person or thing.

A clarification of the issue is of utmost importance as the following demonstrate.

A. The State's file shows no evidence that the defendant's car hits the "victim: in this case but rather suggests that he fell or jumped out of the Defendant's car. The implication for the Defendant is as follows:

– There will be confusion at the end of the State's case when a motion for judgment on the evidence. As there is no evidence that the Defendant's car hit the deceased *Honeycutt* mandates a judgment on the evidence. Under the Trial Court's reasoning it will not.

B. Jury instructions:

– Under *Honeycutt*, the Defendant is entitled to an instruction stating there must be some impact between the Defendant's car and the deceased before the Defendant's duty to stop and remain at the scene becomes

a legal duty punishable under the law. Under the Trial Court's rational [sic] the Defendant will not get this instruction and thus be denied a fair trial.

C. Defenses:

– *Honeycutt*, indicates that it is a defense to the crime if there is no impact between the defendant's car and the deceased. Under the Court's rational [sic], the defendant will be deprived of the ability to defend himself as the defense will not be legitimized in final instructions for the jury under Article I § 19 (The jury according to case law may not disregard the trial court's instructions.)

D. Opening and closing arguments:

– The defendant will not be able to make any arguments or statements that there was no impact between his car and the deceased as the State or Trial court will be able to intervene and prohibit such arguments or statements "as incorrect statements of the law." Consequently the defendant's ability to defend himself is seriously undermined if not downright destroyed. A point at odds with U.S. Supreme Court principals under *Chambers v. Mississippi*, 410 U.S. 284 (1973) that a man has a constitutional right to a defense.

E. Mental and physical turmoil pending appeal:

– There is a very strong possibility that the Defendant will be convicted without the above cited defense. This counsel uses judicial notice to state that an appeal in Indiana takes a very long time to reach a conclusion. Counsel does not fault the justices for this and understands that they like anyone in the legal profession are very, very, busy and do the best they can with the resources at hand. But, the Defendant here is a young

man in college. Losing a year of his life pending reversal on appeal will have a detrimental impact on his life (he will lose a year of study in what can only be considered his formative educational years), safety (no one can seriously argue that prisons are safe), and mental turmoil (a year in prison for an innocent man is something that no one can even begin to comprehend thus the legendary saying it is better for ten guilty people to go free than an innocent should suffer)

F. Taxpayer money:

– The last time this counsel looked at incarceration costs he found them to be about $20,000 a year. That is a great deal of money for taxpayers to handover [sic] for a mistake.

G. Judicial efficiency:

– A pre-trial appeal here will save everyone trouble, time, and money. It is no secret that when the judicial wheels of trial begin to move everyone is effected in one way or another: jury questioners (people find them intrusive); jury duty (people leave work, homes, and family to attend this sacred trust but they leave a void behind them that must be attended at cost and some inconvenience); trial dockets (everything is put on hold until after trial thus letting civil and criminal cases backlog further); appellate time (if this Court decides the issue before trial there is a strong possibility there will be no trial and no subsequent appeal. Thus all involved have a stake whether they know it or not to have a timely judicial intervention of this appeal.)

5. Therefore a resolution before trial is essential. Without one there really will not be a trial at all. The trial

would only serve to preserve the record for appeal. A cynical way to view it but true nonetheless.

Respectfully submitted,

CLOUSE LAW OFFICES

/s/ Ivan Arnacz

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Ivan A. Arnaez, # 21994-87
123 N.W. 4th St., Suite 317
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Tel: (812) 424-6671
Fax: (812) 434-4818

Attorneys for Appellant-Defendant

I hereby verify under the penalties for perjury that the foregoing representations are true to the best of my knowledge.

/s/ Ivan Arnaez

Ivan A. Arnaez, Attorney

CERTIFICATION OF SERVICE

I certify that I served a copy of the foregoing motion upon the below named people, by depositing same in the United States Mail, Postage Prepaid, on or before the ___ day of January, 2004.

Robert Krieg
Gibson County Prosecutor
225 North Hart Street, Suite 002
Princeton, Indiana

Karen Freeman-Wilson
Indiana Attorney General
Indiana Government Center South; Fifth Floor
402 West Washington Street
Indianapolis, Indiana 46204

/s/ Ivan Arnaez
Ivan A. Arnaez

APPENDIX J

STATE OF INDIANA, COUNTY OF GIBSON	) SS:	IN THE GIBSON SUPERIOR COURT
STATE OF INDIANA VS. MICHAEL C. ARMSTRONG	) CAUSE NO. 26D01-0306-FC-00008	

Substituted Petition for Certification of Interlocutory Appeal

(Filed Dec. 23, 2003)

Comes now the Defendant, Michael Armstrong, by counsel, John D. Clouse and Ivan A. Arnaez, and petitions for a certification of an interlocutory order for immediate appeal under Rule 14(B) of the Indiana Rules of Appellate Procedure.

1. On December 17, 2003, the Court denied the Defendant's motion for Dismissal.

2. The Defendant identifies the interlocutory order sought to be certified as Exhibit "A".

3. The issue for appeal is whether the Court erred by denying the Defendant's motion to dismiss.

4. An interlocutory appeal should be permitted because there is an issue involving a substantial question of law, i.e., that being whether contact must exist between a driver's car and a person or thing before the duty to stop and remain at the scene under I.C. 9-26-1-1 is required.

5. An early determination of this question will promote an orderly disposition of the case. If the law is not

correctly applied, the defendant's [sic] will be denied a correct instruction of the law, and will suffer an incorrect denial for judgment on the evidence at the end of the State's case in chief.

6. A remedy though [sic] appeal after trial will not be adequate because the law is with the defendant such that he will have to suffer incarceration pending reversal on appeal.

Respectfully submitted,

CLOUSE LAW OFFICES

/s/ Ivan Arnaez

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123 N.W. 4th St., Suite 317
Evansville, IN 47708
Tel: (812) 424-6671
Fax: (812) 434-4818
Attorneys for Defendant

CERTIFICATION OF SERVICE

I certify that a true and correct copy of the above and foregoing motion to correct error was served upon the Gibson County Prosecutor's Office this ___ day of December, 2003

/s/ Ivan Arnaez

One of the Attorneys for Defendant

APPENDIX K

STATE OF INDIANA, COUNTY OF GIBSON	) SS:	IN THE GIBSON SUPERIOR COURT
STATE OF INDIANA VS. MICHAEL C. ARMSTRONG	) CAUSE NO. 26D01-0306-FC-00008	

SUBSTITUTED MOTION TO DISMISS

(Filed Oct. 29, 2003)

Comes now the defendant, Michael C. Armstrong, by counsel, John D. Clouse and Ivan A. Arnaez, and submits and [sic] additional reason for the Court to dismiss this information pursuant to I.C. 35-34-1-4(a)(5): the law does not place a legal duty upon Armstrong's shoulder's [sic] too [sic] act.

He intends this to be an additional argument in support of the one previously filed.

Pursuant to Criminal Rule 3 he attached an additional memorandum stating specifically the grounds for dismissal.

MEMORANDUM OF LAW

There is no duty for Armstrong to stop and help here such that the charging statute penalizes him.

There is a difference between what *should* be done and what *must* be done. One is a [sic] based on morals, religion, and manners. The other is based on duty and law. Society *casts shame* [sic] one but *penalizes* the other.

Mr. Armstrong may have had a *moral* duty to act but not a legal one. Does our law recognize this? Yes.

> Basis of Criminal Liability – I.C. 35-41-2-1
> "A person commits an offence only if he voluntarily engages in conduct in violation of the statute defining the offence. However, a person who omits to perform an act commits an offence only if he has a statutory, common law, or contractual duty to perform the act."

What does the charging statute have to say about duty to act? Duty to stop and help is triggered when the driver's car strikes a person or thing. I.C. 9-26-1-1; *Honeycutt v. State*, 760 N.E.2d 648 (Ind.Ct. App. 2001)

The statute placed no duty on Armstrong to act unless his car hit the deceased. There is no evidence it did.

Respectfully submitted,

Clouse Law Offices

/s/ Ivan A. Arnaez

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Ivan A. Arnaez, No. 21994-87
123 N.W. 4th Street, Suite 317
Evansville, Indiana 47708
Telephone: (812) 424-6671
Fax No.: (812) 434-4818
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the above and foregoing pleading upon the Gibson County Prosecutor by placing the same, postage prepaid, in the United States mail this 28th day of October, 2003.

/s/ Ivan A. Arnaez
Ivan A. Arnaez

APPENDIX L

STATE OF INDIANA	)	
	)	SS: IN THE GIBSON
COUNTY OF GIBSON	)	SUPERIOR COURT
STATE OF INDIANA	)	CAUSE NO.
	)	26D01-0306-FC-00008
VS	)	
	)	(Filed Oct. 15, 2003)
MICHAEL C. ARMSTRONG	)	

MOTION TO DISMISS

Comes now the defendant, Michael C. Armstrong, by counsel, John D. Clouse and Ivan A. Arnaez, and moves this Court to dismiss this information pursuant to I.C. 35-34-1-4(a)(5) for the reason the facts alleged in the State's information do not constitute a crime. Pursuant to Criminal Rule 3 a memorandum stating specifically the grounds for dismissal is filed herewith.

MEMORANDUM OF LAW

1. The defendant is charged with I.C. 9-26-1-1 and 9-26-1-8. (Exhibit's "A" and "B") The State's charges the defendant for leaving the scene of an accident. (Exhibit "C") Assuming for an instant that the State affidavit and file states the truth there are two reasonable conclusions that can be reached: either Craig C. Mobley was pushed out or jumped out of the defendant's car. (State's file Exhibit "D" and affidavit of probable cause "D.1")

2. Even if this were so the facts are not illegal under this charge. The law will not uphold a conviction.

> Crime of failure to stop after accident resulting in serious bodily injury was limited to incidents

where vehicle struck something or someone, resulting in injury, and did not apply where passenger fell or was pushed out of moving vehicle. *Honeycutt v. State*, 760 N.E.2d 648 (Ind. App. 2001). (Entire case attached as Exhibit "E")

3. The relevant language of this case shows there is no crime as charged.

"As Jonathan points out, and we agree, the legislature limits the scope of this statute to incidents involving a vehicle striking something that causes injury to someone, or a vehicle striking a person and causing injury. Samuel testified that he was not struck by a vehicle. The trial court apparently believed Samuel's testimony, because the trial court granted the defense's motion for involuntary dismissal of Count I. In fact, the trial court did not believe that Samuel was pushed out of the vehicle by Darrell. This is evidenced by the trial court's grant of the defense's motion for involuntary dismissal of Count III.

In *State v. Eilers*, 697 N.E.2d 969, 970-971 (Ind. Ct. App. 1998), this court held:

'When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself. *Saurer v. Bd. of Zoning Appeals*, 629 N.E.2d 893, 897 (Ind. Ct. App. 1994). . . . Although it is true that we must look to legislative intent when construing a statute with ambiguous language, "if the language of a statute is clear and unambiguous it is not subject to judicial interpretation.'

The language of the statute here is clear and unambiguous, therefore we do not need to look beyond the statute for legislative intent.

> WEBSTER'S II NEW COLLEGE DICTIONARY 1092 (2001) defines the word "struck" as a verb, meaning "to collide with" or "to move into violent contact." Ind. Code § 9-26-1-1 clearly must involve a person driving a vehicle. The vehicle is the instrument that causes the injury. Additionally, Ind. Code § 9-26-1-1(2)(B)(i) specifically states "person struck." It is true that Jonathan was driving the vehicle that Samuel fell out of. However, Samuel was not struck by that vehicle or any other vehicle. Samuel struck the pavement, but this is not contemplated by the statute. Consequently, we find that Ind. Code § 9-26-1-1 does not apply to Jonathan's situation.
>
> Accordingly, we find that the trial court could not reasonably infer that Jonathan was guilty of failure to stop after an accident resulting in serious bodily injury. Therefore, we find that there is no substantial evidence of probative value to support the conclusion of the trier of fact. See Mabbitt, 703 N.E.2d at 700.... Reversed. *Honeycutt v. State*, 760 N.E.2d 648, 651 (Ind.Ct.App. 2001)

4. So with this information in mind what must the State do? Move for a dismissal of the charges. Why? Ethical duty mandate it. Rule 3.1 of the Indiana Rules of Professional Conduct implies that when a case lacks merit it must be dropped.

> "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless *there is a basis for doing so* . . . " 3.1 – Indiana Rules of Professional Conduct (Meritorious Claims and Contentions)

5. At first glance this seems at odds with our adversarial process wherein each side fights tooth and nail for

its cause. However, fighting in our criminal justice system for the mere sake of advocacy will take a back seat when ethics are at stake: such as a court finding that there was no crime. Why? The State implicitly has two clients: the government and the people of which the defendant is a member.

> "A United States district attorney carries a *double burden*. He owes an obligation to the Government, just as any attorney owes an obligation to his client, to conduct his case zealously. But he must remember also that he is a representative of the Government dedicated to fairness and equal justice to all and, in this respect, *he owes a heavy obligation to the accused*." *U.S. v. Wilson*, 149 F.3d 1298, 1303 (11th Cir.1998)

6. So what must the State do with this dual obligation in mind?

> "[It] must mind his "specific obligations to see that the defendant is accorded procedural justice and that guilt is decided *upon the basis of sufficient evident* [sic]." Rule 3.8 Comment – Indiana Rules of Professional Conduct

7. Therefore the State must look and see if it can continue to prosecute this case under the rules and its dual obligation. Specifically it must ask: can this case ethically proceed when sufficient evidence does not exist? The question is answered in its own affidavit. (See exhibit "D") It speaks loud and clear: it can not [sic].

8. That leads us to two strong legal impediments:

U.S. Constitution – Due Process;

Indiana Constitution – Due Course of Law;

A man can not [sic] be convicted as charged unless his actions constitute an offence. There is no offence as charged.

9. The law is with the defendant. He can not [sic] be convicted: the case law does not support it, ethics will not allow it, and the constitutions forbid it. He humbly asks that the cause be dismissed.

Respectfully submitted,

Clouse Law Offices

/s/ Ivan A. Arnaez
John D. Clouse, No. 3576-82
Ivan A. Arnaez, No. 21994-87
123 N.W. Fourth Street, Suite 317
Evansville, Indiana 47708
Telephone: (812) 424-6671
Fax No. (812) 434-4818
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the above and foregoing pleading upon the Gibson County Prosecutor by placing the same, postage prepaid, in the United States mail this 15th day of October, 2003.

/s/ Ivan A. Arnaez

Exhibit A

Indiana Code § 9-26-1-1 Acts required of driver of vehicle involved in accident resulting in injury or death.

The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:

(1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.

(2) Immediately return to and remain at the scene of the accident until the driver does the following:

(A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.

(B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

HISTORY: P.L.2-1991, § 14.

Exhibit B

Indiana Code § 9-26-1-8 Violations classified as Class B misdemeanor or Class D felony

(a) A person who fails to stop or comply with section 1(1) or 1(2) [IC 9-26-1-1(1) or IC 9-26-1-1(2)] of this chapter after causing injury to a person commits a Class A misdemeanor. However, the offense is:

(1) a Class D felony if:

(A) the accident involves serious bodily injury to a person; or

(B) within the five (5) years preceding the commission of the offense, the person had a previous conviction of any of the offenses listed in IC 9-30-10-4(a); and

(2) a Class C felony if the accident involves the death of a person.

(b) A person who fails to stop or comply with section 3 or 4 [IC 9-26-1-3 or IC 9-26-1-4] of this chapter after causing

damage to the property of another person commits a Class B misdemeanor.

HISTORY: P.L.2-1991, § 14; P.L.96-1996, § 2; P.L.97-1996, § 2.

Exhibit C

STATE OF INDIANA)) SS: COUNTY OF GIBSON)	IN THE GIBSON ☒ SUPERIOR COURT ☐ CIRCUIT 2003 TERM
STATE OF INDIANA VS. MICHAEL C. ARMSTRONG	CAUSE NO. 26D010306-FC-0008 AGENCY CASE NO. 2003-01359

INFORMATION:
FAILURE TO STOP AFTER
PERSONAL INJURY ACCIDENT
RESULTING IN DEATH

(Filed June 16, 2003)

Deborah Borchelt Swears of Affirms that:

Michael C. Armstrong on or about the 31st day of May, 2003, in Gibson County, State of Indiana, at CR 400 W. North of CR 800 S. (location), was the driver of a vehicle involved in an accident that resulted in the death of a person, to-wit: Craig R. Mobley; and defendant failed to:

☒ Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than necessary.

☒ Immediately return to and remain at the scene of the accident and comply with the requirements of I.C. 9-26-1-1(2).

☒ Immediately give notice of the accident by the quickest means of communication to a law enforcement agency.

All contrary to the form of the statute made and provided, to-wit: Indiana Code § 9-26-1-1, Indiana Code § 9-26-1-8, Failure to Stop After Personal Injury Resulting in Death, a Class C Felony, and against the peace and dignity of the State of Indiana.

I affirm under the penalties for perjury that the foregoing representations are true, this the 13th day of June, 2003.

/s/ Deborah Borchelt 26-10
Deborah Borchelt – GCSD

Approved this the 13th day of June, 2003.

/s/ Sharon H. Werne
Prosecuting Attorney

Exhibit D

STATE OF INDIANA)	IN THE GIBSON
) SS:	☐ SUPERIOR COURT
COUNTY OF GIBSON)	☐ CIRCUIT
	2003 TERM
STATE OF INDIANA	CAUSE NO.
VS.	AGENCY CASE NO. 2003-01359
MICHAEL C. ARMSTRONG	

AFFIDAVIT FOR PROBABLE CAUSE

Comes now Deborah Borchelt who swears or affirms that he/she believes and has good cause to believe that Michael C. Armstrong (Defendant) committed the offense of Failure to Stop After Personal Injury Accident Resulting in Death, for the following reason(s) to-wit:

1. That your affiant is a police officer with the Gibson County Sheriff's Department. That on or about the 31st day of May, 2003, in Gibson County, State of Indiana: (Write observation in narrative form).

On 5/31/03 emergency responders were dispatched to a location at CR 400 W north of CR 800 S in reference to a person laying on the grass, unconscious. Upon officer's arrival it was determined that the subject lying on the grass, Craig R. Mobley, was seriously injured and it appeared that Craig R. Mobley had exited a moving vehicle. Upon my arrival Craig R. Mobley was unconscious on the grass being attended to by the ambulance crew. The only vehicle on the scene were those that belong to the emergency responders. Deputy John Alley and Trooper Brad Chandler were still on the scene approximately one

hour later when Michael C. Armstrong returned to the scene with his father. I returned to the scene and the defendant advised Deputy John Alley and I that he was the driver of the vehicle that Craig C. Mobley existed. He stated that he was driving south on CR 400 W when Craig R. Mobley jumped out of the vehicle while it was in motion. The defendant advised this officer that he believed Craig R. Mobley to be injured because he (Craig R. Mobley) was not moving after he came in contact with the ground. The defendant did not stop at the scene or call for assistance. 9-1-1 was eventually called by the property owner, Jim Channell, at approximately 1830 hrs. when Jim Channell found Craig R. Mobley on his property. Michael C. Armstrong advised that he was the driver of the a 1998 black Ford Expedition, VIN 1FMPU18L3WLA74572, License plate #987424A (2003 issue). The defendant advised this officer that Craig R. Mobley existed the above vehicle while he (Michael C. Armstrong) was driving it. Craig R. Mobley died as a result of the injures he sustained from this incident.

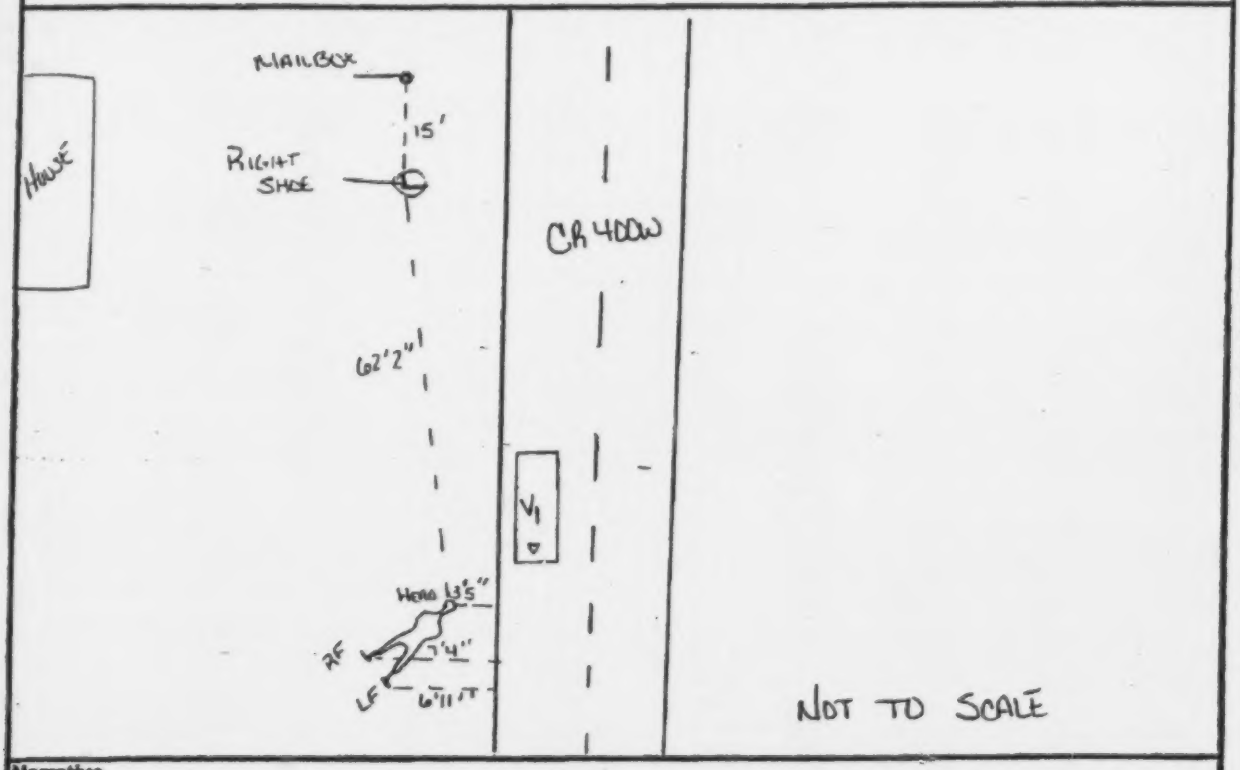
Description of Defendant: White/Male/DOB: 01/08/81/SSN: 347-74-4586/OLN: 1190-11-4115/Hgt: 5-09 Wgt 165 lbs/Hair: Blo/Eyes: blu

---

Page 1 of 1

Loss ID
200301359

Diagram (Refer to Vehicle by Number)
○ Rear End ○ Head On ○ Rear to Rear ○ Same Direction Sideswipe ○ Opposite Direction Sideswipe ○ Ran Off Road ○ Right Angle ○ Left Turn ○ Right Turn ○ Left/Right Turn NORTH



Narrative

V1 southbound on CR 400 W south of SR 168. It was reported that D1 was driving approximately 50 mph when the passenger, for undetermined reasons, exited the moving vehicle through the passenger side door. The passenger came to rest on the west side of the roadway. D1 did not stop and left the scene. D1 returned to the scene approximately one hour later. The passenger died as a result of the injuries that he sustained.

Time Notified	Time Arrived	Other Location of Investigation
6:30 ● PM	6:47 ○ PM	

Assisting Officer	ID No.	Agency	Investigation Complete?	Photos Taken?
ALLEY, JOHN L	2621	Gibson County Sheriff	○ Yes ● No	● Yes ○ No
LEISTER, RODGER D	352	Owensville Police	Date of Report: 05/31/2003	Other Report Form Furnished? ● Yes ○ No
Investigating Officer (printed): BORCHELT, D. K.	2610	Agency: Gibson County Sheriff Department		
Investigating Officer's Signature: D Borchelt	2e.-10			

BEST AVAILABLE COPY

Exhibit D.1

CASE SUPPLEMENTAL REPORT
NOT SUPERVISOR APPROVED

Gibson County Sheriff's Department OCA: ***200301359***

THE INFORMATION BELOW IS CONFIDENTIAL – FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: Offense: *ALL OTHER MISCELLANEOUS*

Case Mng Status: *NA* Occured [sic]: *05/31/2003*

Investigator: *ALLEY, J. L. (2621)*
Date/Time: *06/04/2003 18:28:22, Wednesday*

Supervisor: *(O)* Supervisor Review Date/Time: *NOT REVIEWED*

Contact: Reference: *Investigative Progress*

On Saturday May 31, 2003 I was working the 3pm – 11 pm shift for the Gibson County Sheriff Department and at approximately 6:30 pm while on a traffic stop on SR 57 at Mackey Co-Op I heard central dispatch send Fire and Ambulance units to a address on Coal Mine road west of Gibson Southern High School. The original dispatch was for a man lying in a front yard foaming at the mouth. After I had completed my paperwork for the traffic citation I heard Officer Roger Lyster describe that it appeared to be a hit and run. It was this time that dispatch sent Deputy Borchelt to the scene. As I was turning from SR 57 onto SR 168 I radioed into dispatch to see if they needed me to respond also, at which point they said yes. As I was en-route to the scene I asked Deputy Borchelt which direction she would like for me to come in from and was advised to come in from SR 168. I proceeded west on SR 168 to Coal

Mine Road and turned left (south) and proceeded to the scene. I pulled my car across the roadway so as to block any traffic from the north entering the scene. I would estimate that my car was approximately 150 yards north of the scene. As I approached the area on foot I noticed a person lying face up along the side of the road with EMT and various fire personnel attending to them. Deputy Borchelt asked if I had any protective gowns in my vehicle, which I retrieved and assisted one of the EMT's in putting it on. As Deputy Borchelt was taking photographs of the scene I assisted the EMT's by reading out the 02 level as displayed by a monitor attached to the left hand of Mr. Mobley. I continued to do until the Lifeflight crew was ready to load Mr. Mobley for transport to St. Mary's. trooper Chandler at this time started to get various measurements at the scene and Deputy Borchelt asked if I would get a written statement from the homeowner. As the homeowner was writing out his statement I looked north and south of the scene for any possible evidence but was not able to locate any additional items. Deputy Borchelt at this time had left the scene in an attempt to locate any family members of Mr. Mobley. Trooper Chandler, Ft. Branch officer 756 and myself were discussing the incident when I was approached by Mr. Michael Armstrong and his father who advised that he could explain what had happened. I radioed Deputy Borchelt at this time to inform her that the driver of the vehicle had returned to the scene and she stated to would return to the scene. As he started to tell me what had happened I asked him to stop, I turned on my body mike and read him his Miranda Rights and asked him if he understood his rights, he advised me that he did. He explained that he had seen Mr. Mobley in Owensville and wanted to talk to him about some break ins that had happened at his (Armstrong's) house and that

he was driving to a friends house so that they could also hear his answer to the questions. As he was driving south on Coal Mine Road west of Gibson Southern High School Mr. Mobley opened the door of Mr. Armstrong's vehicle and jumped out. Mr. Armstrong stated that he freaked out and did not know what to do and kept on driving and later called his father to tell him. I asked MR. Armstrong if he would give me a written statement of what had happened and he said he would. I provided Mr. Armstrong with a voluntary statement form and asked if he would like to sit in the rear of the Ft. Branch Police car as it would be easier to write and he agreed. As he was finishing his written statement Deputy Borchelt arrived back at the scene and began asking Mr. Armstrong some questions about what had happened, it was at this time that Mr. Armstrong's father who was standing in front of the car advised his son to not say anything else until he talked to an attorney. Michael Armstrong at that time advised Deputy Borchelt that he wished to speak to an attorney, Deputy Borchelt asked him who his attorney would be and he said he did not have one. Once Mr. Armstrong advised us that he wished to speak to an attorney all questioning stopped. Mr. Armstrong than [sic] said we could search his vehicle if we wished, Trooper Chandler at that time provided Mr. Chandler with a Consent to Search form which he signed. Mr. Armstrong advised us that he had come back to the scene with his father and that his vehicle was at a friends house at the new lake behind Gibson Southern High School. His father said he would take us to where the vehicle was located. Mr. Armstrong agreed to ride in my vehicle to the location where his vehicle was. I placed Mr. Armstrong in the back seat of my [sic] due to the fact that the front passenger seat had my "car caddy" in it that store all of my clipboards and forms. As I

followed Mr. Armstrong's father to the friends house where his vehicle was Mr. Armstrong continued to talk about the incident, both my body mike and rear seat mike where turned on during the trip from the scene to his friends house (950S 450W). Upon arrival at his friends house I took photographs of the outside and inside of his vehicle with the verbal permission of Mr. Armstrong. Trooper Chandler and myself inspected the inside of the vehicle and found no unusually [sic] items, Mr. Armstrong did point out a dent in the front passenger inside door panel near the armrest, he stated that it had been like that for some time. I took a photograph of the door panel from the drivers side of the vehicle. I asked Mr. Armstrong if I could sit in the passenger seat of his vehicle and he said it would be OK, I shut the passenger side door, locked the door and attempted to open the door, the door opened even with the locks activated. As I was getting out of the vehicle I noticed that Trooper Chandler had Mr. Armstrong's cell phone and was attempting to retrieve numbers and times when calls had been placed. I asked Mr. Armstrong if it would be OK to take his cell phone so that Detective Finnerty could look at the entries and he agreed that it would be OK. I wrote out a receipt for his cell phone, thanked him for his co-operation and understanding in this matter and left the residence.

REPORTING OFFICER NARRATIVE

Gibson County Sheriff's Department		OCA *2003-01359*
Victim	Offense	Date/Time Reported
MOBLEY, CRAIG R.	*ALL OTHER MISCELLANEOUS REPOR* [sic]	*Sat 05/31/2003 18:30*
THE INFORMATION BELOW IS CONFIDENTIAL – FOR USE BY AUTHORIZED PERSONNEL ONLY		

One of the first officers on scene advised Dispatch that it appeared that Mobley had been either struck by a vehicle or he exited the vehicle. Upon my arrival on scene I observed Gibson County Medic 4 on scene. The medics were working on Craig Mobley. Lifeflight had been contacted and was en route to the scene. I spoke with the medic crew and they advised me that Craig Mobley was found on his back. They did not have to move him and that he had not been moved since their arrival. He was on the west side of the road. Approximately 62 feet north of where Craig way lying was a tennis shoe that matched the one that Craig was wearing. He was only wearing one. The shoe was located on the west side of the road in the grass. I was advised by one of the responders on scene that the homeowner had noticed a tennis shoe on his yard and then located Craig Mobley. The homeowner is the one who called 9-1-1. While on scene I made contact with Detective Finnerty to advise him of the situation. Prior to Craig Mobley being moved onto a backboard, I marked the location of his feet and the top of his head on the grass with orange paint. After Craig Mobley was taken from the

scene by Lifeflight. Trooper Chandler and Deputy Alley took measurements and recorded where Craig Mobley was lying and where his other tennis shoe was located. Trooper Chandler provided me with the measurements and a not to scale diagram. I collected the clothing from Craig Mobley that was left at the scene.

Owensville Officer Roger Leister advised me that he knew where Craig and his mother lived. I went with him to the address located at 201 N. Third in Owensville. It was the upstairs apartment. We knocked on the door repeatedly, no one answered. We also knocked on the door of the downstairs apartment where his aunt lives and no one answered. Officer Leister advised me that Craig Mobley's grandfather is Bill Fithian who lives in Indian Hills. I was familiar with the Fithian residence. While I was en route to the Fithian residence, Deputy Alley made radio contact with Dispatch and advised them that the driver of the vehicle was on scene. This was approximately one hour after the initial call came in. He requested that I return to the scene to speak with the driver. I arrived and Deputy Alley advised me that he advised Michael Armstrong of his Miranda Rights and that Michael Armstrong had agreed to give a written statement. After he finished his statement I began to ask him some more questions. He advised me that after Craig Mobley had jumped out of his vehicle he was afraid and did not stop. I asked him if he believed that Craig was injured and he stated that he did believe that Craig was injured. He stated that he thought that the homeowners of the property that he landed on saw what happened and would call for help. He stated that he couldn't call. I asked him what stopped him from stopping at any house and ask to use the phone to call. He was unable to answer that. He stated that he went to Ft.

Branch and called his father. He said that his father came and picked him up and that is when they returned to the scene. I asked him how he called his father and he advised me that he used his cellular phone. I asked him why he did not use his cellular phone to call for help. At this point his father advised him to stop answering questions and to speak to an attorney. He was unable to advise which attorney he was going to use. We asked for consent to search his truck and he granted verbal consent. Trooper Chandler and Deputy Alley went with him to the truck and conducted the search. His cellular phone was collected as evidence. Deputy Alley advised me that he also took photographs of the truck. I left the scene and continued to the Fithian residence and spoke to Mr. Fithian. I advised him that Craig had been involved in an accident and that he needed to attempt to make contact with Craig's mother and to tell her that Craig was taken by Lifeflight to St. Mary's Hospital.

I left the Fithian residence and went to St. Mary's Hospital. I had obtained the driver's license from the pocket of Craig Mobley. I gave the information to St. Mary's Hospital. They had collected the rest of the clothing that Craig Mobley had been wearing. This clothing was in a paper bag and took the entire bag. I was advised by the nursing staff that I needed to speak to Vanderburgh County Deputy Chad Ferguson. I made contact with him and he advised me that there was a plastic bag containing a greenish-brown dried plant material. It was believed to be marijuana, but had not been tested as of yet. Also located were cigarette rolling papers. These items were located in the pockets of the clothing that Craig Mobley was wearing. Deputy Ferguson stated that he would make a report and fax that report to me. I met and spoke with Michael

Mobley, father to Craig Mobley, in the emergency room. I advised him of the information that we had at that time. I then went to the Intensive Care Unit where Craig was a patient. I spoke to the nursing staff and explained that I needed to try to get photographs of the injuries on Craig Mobley. They exposed his injuries and allowed me to photograph them.

After leaving the hospital I made contact with someone at the residence where Scott Brewer is living. I was told that Scott Brewer was not at home at the time. I left a message requesting that Scott Brewer call me at the Sheriff's Department as soon as he returned. At approximately 2315 hrs. Scott Brewer returned my call. I advised him that I needed to set up a time for him to come in and speak to me. He stated that he would come in on 06/01/03 at approximately 1730 hrs. I asked him if he knew what I needed to speak to him about. He advised me that Michael Armstrong had told him that Craig Mobley had jumped out of his vehicle while he was driving it. I advised Scott Brewer to make contact with me if there was a conflict and the time of the interview had to change.

Reporting Officer: *BORCHELT, D. K.*

INCIDENT/INVESTIGATION REPORT

By: DBORCHELT, GIBSON8 [sic] 06/04/200[sic]

Gibson County Sheriff's Department | Case# *2003-01359*

Status Codes 1=None 2=Burned 3=Counterfeit/Forged 4=Damaged 5=Recovered 6=Seized 7=Stolen 8=Unknown

	IBR	Status	Quantity	Type Measure	Suspected Type	Up to 3 types of activity
DRUGS						

Assisting Officers

ALLEY, J.L. (2621), LEISER, R.D. (352), MARTIN, C.E. (756), MILEY, K. (853), TROOPER (ISP)

Suspect Hate/Bias Motivated:

NARRATIVE	On 05/31/03 Central Dispatch received a 9-1-1 call from a homeowner stating that there was an unconscious person in his front yard. The male, identified as Craig Mobley, was transported by Lifeflight to St. Mary's Hospital. Approximately one hour after the initial call came in, Michael Armstrong arrived on scene with his father. Michael Armstrong was read his Miranda Rights by Deputy John Alley. Michael Armstrong agreed to give a written statement. He stated that Craig Mobley was in his vehicle and jumped out of the vehicle as he was driving southbound on CR 400W between SR 168 and CR 800S (Coal Mine Road). Michael Armstrong stated that he did not know what to do. He drove to another location and called his father. His father picked him up and drove him back to the scene. I was attempting to question Michael Armstrong when he stated that he wanted to speak to a lawyer before answering any more questions. We asked for consent to search the vehicle that he was driving. He gave written consent. Deputy Alley and State Police Trooper Brad Chandler accompanied him to his vehicle and performed the search. Michael Armstrong's cellular phone was collected as evidence. I was unable to immediately locate the mother of Craig Mobley. I made contact with other family and advised them that Craig Mobley had been involved in an accident. I went to St. Mary's Hospital. I took photographs of the injuries to Craig Mobley and spoke with his father.

I, Michael Charles Armstrong, am not under arrest for, nor am I being detained for offenses concerning the events I am about to make known to John Alley. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the

following information of my own free will, for whatever purposes it may serve.812-753-3680

I am 22 years of age, and I live at 104 West Ulen Fort Branch IN 347-74-458.

About 3 weeks about I found out that Craig Mobley broke in my house and stole a few things. Scott Brewer call me today saying that Craig told him that he broken in my house more than one time. He told him that if he had the chance he would do it again. So i bumped into Craig in Owensville Uptown & told him to get in that In to talk to him. he said he didn't won't to get beat up & told him that I just wanted to talk to him or we could handle it a different way because I new of a few other robberys. He got in and we was headed to Scott's house and I didn't won't him to know where I was going so i we down coalmine road and he said he didn't won't me to hurt him & jumped out about a quarter of a mile down coalmine road.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and co [illegible] any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 7:44 p, this 31 day of May, ~~19~~ 20 [illegible]

WITNESS: John Alley x Mike Armstrong
Signature of person giving voluntary statement

WITNESS: _____

Exhibit E

760 N.E.2d 648

Jonathan P. HONEYCUTT,
Appellant-Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 49A05-0105-CR-201.

Court of Appeals of Indiana.

Dec. 28, 2001.

Patricia Caress McMath Indianapolis, IN, Attorney for Appellant.

Steve Carter, Attorney General of Indiana, Cynthia L. Ploughe, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee.

OPINION

RILEY, Judge.

STATEMENT OF THE CASE

Appellant Defendant, Jonathan P. Honeycutt (Jonathan), appeals his conviction for failure to stop after an accident resulting in serious bodily injury, a Class A misdemeanor, Ind.Code § 9-26-1-1.

We reverse.

ISSUE

Jonathan raises two issues on appeal, one of which we find dispositive and restate as follows: whether the State presented sufficient evidence to support his conviction for failure to stop after an accident resulting in serious bodily injury.

FACTS AND PROCEDURAL HISTORY

The facts relevant to our disposition are as follows. On May 8, 1998, Jonathan and his brothers, Darrell Honeycutt (Darrell) and Samuel Honeycutt (Samuel), went to a couple of bars. After leaving the last bar, Jonathan, Darrell and Samuel got into a four (4) door vehicle. Jonathan was driving, Darrell was in the passenger seat, and Samuel was in the back seat behind the driver. At some point, the brothers got into an argument, and Samuel wanted out of the vehicle.

Samuel testified that he asked Jonathan to stop the vehicle several times. However, Jonathan did not stop. Samuel testified, "I had the door open waiting for him to stop the car. I was poised to get out when he stopped, but he was doing about 40. He had no intention of stopping, I don't guess, and that's when I got pushed out of the car." (R. 80). When asked who pushed him out of the vehicle, Samuel testified that it was Darrell who pushed him.

While he was in the street, Samuel alleged that Jonathan positioned the vehicle over his body and revved the engine for approximately fifteen (15) seconds. Samuel testified that he asked Jonathan to help get him out of the street. Jonathan pulled Samuel out of the street and placed him in a driveway. Samuel testified that he did not ask for further assistance. Jonathan wanted Samuel to get

back in the vehicle with him and Darrell and go home, but Samuel stated, "I can't go home. I need an ambulance." (R. 93). Samuel testified that Jonathan then took his hat, got back into the vehicle, and, again, positioned the vehicle over his body, revved the engine for approximately fifteen (15) seconds, and drove off.

Jonathan and Darrell drove home without Samuel. Jonathan, Darrell and Samuel lived in the same home, which was three (3) blocks from the scene. Approximately ten (10) to (20) twenty minutes after Jonathan and Darrell arrived at home, the police knocked on their door. Samuel told a police officer that "his brother, Jon, was driving the car that ran over him. He pretty much said that the car ran over him." (R. 40).

On May 13, 1998, the State filed an information against Jonathan and Darrell, charging them with Count I, criminal recklessness, a Class D felony, Ind.Code § 35-42-2-2; and Count II, failure to stop after an accident resulting in serious bodily injury, a Class D felony, Ind.Code § 9-26-1-1. The counts read as follows:

> COUNT I
>
> Darrell Honeycutt and Jonathan Honeycutt, on or about May 8, 1998, did recklessly inflict on Samuel Greg Honeycutt serious bodily injury, that is: a fractured leg by running over Samuel Greg Honeycutt with a vehicle, that is: a 1995 Mazada [sic] automobile;
>
> COUNT II
>
> Darrell Honeycutt and Jonathan Honeycutt, being the driver of a Mazada [sic] automobile which was involved in an accident resulting in serious bodily injury, that is: a fractured leg to Samuel Greg Honeycutt,

> did fail to immediately stop the vehicle at the scene of the accident, which was at approximately 1457 Dunlap Avenue or as close to the accident as possible, and did fail to immediately return to and remain at the scene of the accident until they had given information and rendered assistance as required by IC 9-26-1-1[.]

(Appellant's Appendix at 22). The information was later amended to delete Darrell from Counts I and II and to add Count III, charging Darrell with criminal recklessness for pushing Samuel out of the vehicle.

On December 27, 2000, a bench trial was held. At trial, Samuel testified that he was not actually struck by the vehicle that Jonathan was driving. Samuel stated that his leg broke when he fell out or was pushed out of the vehicle. After the State rested, the defense moved for an involuntary dismissal as to all counts. Regarding Count I, Jonathan's counsel stated, "it's clear that there's absolutely no factual basis for that count." (R. 126). The State did not respond, and the trial court dismissed Count I. The trial court also granted the defense's motion as to Count III. The trial continued on Count II, and Jonathan testified. In order for the parties and the court to research Count II, the trial court continued the case until January 10, 2001.

After hearing arguments on January 10, 2001, the trial court found Jonathan guilty of Count II. On March 23, 2001, Jonathan was sentenced. The trial court entered judgment of conviction as a Class A misdemeanor and imposed a sentence of 365 days, with 353 days suspended.

Jonathan now appeals.

DISCUSSION AND DECISION

Jonathan argues that the State did not present sufficient evidence to support his conviction for failure to stop after an accident resulting in serious bodily injury. Specifically, Jonathan argues that Ind.Code § 9-26-1-1 does not apply to this situation. We agree.

[1-3] In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Mabbitt v. State*, 703 N.E.2d 698, 700 (Ind.Ct.App.1998). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom and will affirm if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *Id.*

Ind.Code § 9-26-1-1 provides:

> The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:
>
> (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.
>
> (2) Immediately return to and remain at the scene of the accident until the driver does the following:
>
> > (A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.
> >
> > (B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

As Jonathan points out, and we agree, the legislature limits the scope of this statute to incidents involving a vehicle striking something that causes injury to someone, or a vehicle striking a person and causing injury. Samuel testified that he was not struck by a vehicle. The trial court apparently believed Samuel's testimony, because the trial court granted the defense's motion for involuntary dismissal of Count I. In fact, the trial court did not believe that Samuel was pushed out of the vehicle by Darrell. This is evidenced by the trial court's grant of the defense's motion for involuntary dismissal of Count III.

In *State v. Eilers*, 697 N.E.2d 969, 970-971 (Ind.Ct.App.1998), this court held:

> When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself. *Saurer v. Bd. of Zoning Appeals*, 629 N.E.2d 893, 897 (Ind.Ct.App.1994). . . . Although it is true that we must look to legislative intent when construing a statute with ambiguous language, "[i]f the language of a statute is clear and unambiguous it is not subject to judicial interpretation." *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind.Ct.App.1995), *reh'g denied, trans. denied.*

The language of the statute here is clear and unambiguous, therefore we do not need to look beyond the statute for legislative intent.

[4] WEBSTER'S II NEW COLLEGE DICTIONARY 1092 (2001) defines the word "struck" as a verb, meaning "[t]o collide with" or "[t]o move into violent contact." Ind.Code § 9-26-1-1 clearly must involve a person driving a vehicle. The vehicle is the instrument that causes the injury. Additionally, Ind.Code § 9-26-1-1(2)(B)(i) specifically states "person struck." It is true that Jonathan was driving the vehicle that Samuel fell out of. However, Samuel was not struck by that vehicle or any other vehicle. Samuel struck the pavement, but this is not contemplated by the statute. Consequently, we find that Ind.Code § 9-26-1-1 does not apply to Jonathan's situation.

Accordingly, we find that the trial court could not reasonably infer that Jonathan was guilty of failure to stop after an accident resulting in serious bodily injury. Therefore, we find that there is not substantial evidence of

probative value to support the conclusion of the trier of fact. *See Mabbitt*, 703 N.E.2d at 700.

CONCLUSION

Based on the foregoing, we conclude that Jonathan was improperly convicted of failure to stop after an accident resulting in serious bodily injury.

Reversed.

BROOK, J., and MATHIAS, J., concur.

APPENDIX M

STATE OF INDIANA)	IN THE GIBSON
) SS:	☒ SUPERIOR COURT
COUNTY OF GIBSON)	☐ CIRCUIT
	2003 TERM
STATE OF INDIANA	CAUSE NO. 26D010306-FC-0008
VS.	
MICHAEL C. ARMSTRONG	AGENCY CASE NO. 2003-01359

INFORMATION:
FAILURE TO STOP AFTER PERSONAL INJURY ACCIDENT RESULTING IN DEATH

(Filed June 16, 2003)

Deborah Borchelt swears or affirms that:

Michael C. Armstrong on or about the 31st day of May, 2003, in Gibson County, State of Indiana, at CR 400 W. north of CR 800 S. (location), was the driver of a vehicle involved in an accident that resulted in the death of a person, to-wit: Craig R. Mobley; and defendant failed to:

☒ Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than necessary.

☒ Immediately return to and remain at the scene of the accident and comply with the requirements of IC 9-26-1-1(2).

☒ Immediately give notice of the accident by the quickest means of communication to a law enforcement agency.

All contrary to the form of the statute made and provided, to-wit: Indiana Code §9-26-1-1, Indiana Code §9-26-1-8, Failure To Stop After Personal Injury Resulting In Death, a Class C Felony, and against the peace and dignity of the State of Indiana.

I affirm under the penalties for perjury that the foregoing representations are true, this the 13 day of June, 2003.

/s/ Deborah Borchelt 26-10
Deborah Borchelt – GCSD

Approved this the 13th day of June, 2003.

/s/ Sharon H. Werne
Prosecuting Attorney

APPENDIX N

STATE OF INDIANA,	)	IN THE GIBSON
	) SS:	☐ SUPERIOR COURT
COUNTY OF GIBSON	)	☐ CIRCUIT
		2003 TERM
STATE OF INDIANA		CAUSE NO.
VS.		AGENCY CASE NO.
MICHAEL C. ARMSTRONG		2003-01359

AFFIDAVIT FOR PROBABLE CAUSE

Comes now Deborah Borchelt who swears or affirms that he/she believes and has good cause to believe that Michael C. Armstrong (Defendant) committed the offense of Failure to Stop After Personal Injury Accident Resulting in Death, for the following reason (s) to-wit:

1. That your affiant is a police officer with the Gibson County Sheriffs Department. That on or about the 31st day of May, 2003, in Gibson County, State of Indiana: (Write observations in narrative form).

On 05/31/03 emergency responders were dispatched to a location at CR 400 W north of CR 800 S in reference to a person lying on the grass, unconscious. Upon officer's arrival it was determined that the subject lying on the grass, Craig R. Mobley, was seriously injured and it appeared that Craig R. Mobley had exited a moving vehicle. Upon my arrival Craig R. Mobley was unconscious on the grass being attended to by the ambulance crew. The only vehicles on scene were those that belonged to the emergency responders. Deputy John Alley and Trooper Brad Chandler were still on the scene approximately one hour later when Michael C. Armstrong returned to the

scene with his father. I returned to the scene and the defendant advised Deputy John Alley and I that he was the driver of the vehicle that Craig C. Mobley exited. He stated that he was driving south on CR 400 W when Craig R. Mobley jumped out of the vehicle while it was in motion. The defendant advised this officer that he believed Craig R. Mobley to be injured because he (Craig R. Mobley) was not moving after he came into contact with the ground. The defendant did not stop at the scene or call for assistance. 9-1-1 was eventually called by the property owner, Jim Channell, at approximately 1830 hrs. when Jim Channell found Craig R. Mobley on his property. Michael C. Armstrong advised that he was the driver of a 1998 black Ford Expedition, VIN: 1FMPU18L3WLA74572, License plate # 987424A (2003 issue). The defendant advised this officer that Craig R. Mobley exited the above vehicle while he (Michael C. Armstrong) was driving it. Craig R. Mobley died as a result of the injuries he sustained from this incident.

Description of Defendant: White / Male / DOB: 01/08/81 / SSN: 347-74-4586 / OLN: 1190-11-4115 / Hgt: 5-09 / Wgt 165 lbs / Hair: Blo / Eyes: blu

FURTHER AFFIANT SAYETH NOT.

I affirm under the penalties for perjury that the foregoing representations are true.

DATED: June 5, 20003

/s/ Deborah Borchelt
SIGNATURE OF AFFIANT

APPENDIX O

760 N.E.2d 648

Jonathan P. HONEYCUTT,
Appellant-Defendant,

v.

STATE of Indiana, Appellee-Plaintiff.

No. 49A05-0105-CR-201.

Court of Appeals of Indiana.

Dec. 28, 2001.

Patricia Caress McMath Indianapolis, IN, Attorney for Appellant.

Steve Carter, Attorney General of Indiana, Cynthia L. Ploughe, Deputy Attorney General, Indianapolis, IN, Attorneys for Appellee.

OPINION

RILEY, Judge.

STATEMENT OF THE CASE

Appellant Defendant, Jonathan P. Honeycutt (Jonathan), appeals his conviction for failure to stop after an accident resulting in serious bodily injury, a Class A misdemeanor, Ind.Code § 9-26-1-1.

We reverse.

ISSUE

Jonathan raises two issues on appeal, one of which we find dispositive and restate as follows: whether the State presented sufficient evidence to support his conviction for

failure to stop after an accident resulting in serious bodily injury.

FACTS AND PROCEDURAL HISTORY

The facts relevant to our disposition are as follows. On May 8, 1998, Jonathan and his brothers, Darrell Honeycutt (Darrell) and Samuel Honeycutt (Samuel), went to a couple of bars. After leaving the last bar, Jonathan, Darrell and Samuel got into a four (4) door vehicle. Jonathan was driving, Darrell was in the passenger seat, and Samuel was in the back seat behind the driver. At some point, the brothers got into an argument, and Samuel wanted out of the vehicle.

Samuel testified that he asked Jonathan to stop the vehicle several times. However, Jonathan did not stop. Samuel testified, "I had the door open waiting for him to stop the car. I was poised to get out when he stopped, but he was doing about 40. He had no intention of stopping, I don't guess, and that's when I got pushed out of the car." (R. 80). When asked who pushed him out of the vehicle, Samuel testified that it was Darrell who pushed him.

While he was in the street, Samuel alleged that Jonathan positioned the vehicle over his body and revved the engine for approximately fifteen (15) seconds. Samuel testified that he asked Jonathan to help get him out of the street. Jonathan pulled Samuel out of the street and placed him in a driveway. Samuel testified that he did not ask for further assistance. Jonathan wanted Samuel to get back in the vehicle with him and Darrell and go home, but Samuel stated, "I can't go home. I need an ambulance." (R. 93). Samuel testified that Jonathan then took his hat, got back into the vehicle, and, again, positioned the vehicle

over his body, revved the engine for approximately fifteen (15) seconds, and drove off.

Jonathan and Darrell drove home without Samuel. Jonathan, Darrell and Samuel lived in the same home, which was three (3) blocks from the scene. Approximately ten (10) to (20) twenty minutes after Jonathan and Darrell arrived at home, the police knocked on their door. Samuel told a police officer that "his brother, Jon, was driving the car that ran over him. He pretty much said that the car ran over him." (R. 40).

On May 13, 1998, the State filed an information against Jonathan and Darrell, charging them with Count I, criminal recklessness, a Class D felony, Ind.Code § 35-42-2-2; and Count II, failure to stop after an accident resulting in serious bodily injury, a Class D felony, Ind.Code § 9-26-1-1. The counts read as follows:

> COUNT I
>
> Darrell Honeycutt and Jonathan Honeycutt, on or about May 8, 1998, did recklessly inflict on Samuel Greg Honeycutt serious bodily injury, that is: a fractured leg by running over Samuel Greg Honeycutt with a vehicle, that is: a 1995 Mazada [sic] automobile;
>
> COUNT II
>
> Darrell Honeycutt and Jonathan Honeycutt, being the driver of a Mazada [sic] automobile which was involved in an accident resulting in serious bodily injury, that is: a fractured leg to Samuel Greg Honeycutt, did fail to immediately stop the vehicle at the scene of the accident, which was at approximately 1457 Dunlap Avenue or as close to the accident as possible, and did fail to immediately return to and

> remain at the scene of the accident until they had given information and rendered assistance as required by IC 9-26-1-1[.]

(Appellant's Appendix at 22). The information was later amended to delete Darrell from Counts I and II and to add Count III, charging Darrell with criminal recklessness for pushing Samuel out of the vehicle.

On December 27, 2000, a bench trial was held. At trial, Samuel testified that he was not actually struck by the vehicle that Jonathan was driving. Samuel stated that his leg broke when he fell out or was pushed out of the vehicle. After the State rested, the defense moved for an involuntary dismissal as to all counts. Regarding Count I, Jonathan's counsel stated, "it's clear that there's absolutely no factual basis for that count." (R. 126). The State did not respond, and the trial court dismissed Count I. The trial court also granted the defense's motion as to Count III. The trial continued on Count II, and Jonathan testified. In order for the parties and the court to research Count II, the trial court continued the case until January 10, 2001.

After hearing arguments on January 10, 2001, the trial court found Jonathan guilty of Count II. On March 23, 2001, Jonathan was sentenced. The trial court entered judgment of conviction as a Class A misdemeanor and imposed a sentence of 365 days, with 353 days suspended.

Jonathan now appeals.

DISCUSSION AND DECISION

Jonathan argues that the State did not present sufficient evidence to support his conviction for failure to stop after an accident resulting in serious bodily injury. Specifically, Jonathan argues that Ind.Code § 9-26-1-1 does not apply to this situation. We agree.

[1-3] In reviewing sufficiency of the evidence claims, this court does not reweigh the evidence or judge the credibility of the witnesses. *Mabbitt v. State*, 703 N.E.2d 698, 700 (Ind.Ct.App.1998). We consider only the evidence most favorable to the judgment and the reasonable inferences therefrom and will affirm if there is substantial evidence of probative value to support the conclusion of the trier of fact. *Id.* Reversal is only appropriate when reasonable persons would be unable to form inferences as to each material element of the offense. *Id.*

Ind.Code § 9-26-1-1 provides:

> The driver of a vehicle involved in an accident that results in the injury or death of a person shall do the following:
>
> (1) Immediately stop the vehicle at the scene of the accident or as close to the accident as possible in a manner that does not obstruct traffic more than is necessary.
>
> (2) Immediately return to and remain at the scene of the accident until the driver does the following:
>
> > (A) Gives the driver's name and address and the registration number of the vehicle the driver was driving.
> >
> > (B) Upon request, exhibits the driver's license of the driver to the following:

(i) The person struck.

(ii) The driver or occupant of or person attending each vehicle involved in the accident.

(C) Determines the need for and renders reasonable assistance to each person injured in the accident, including the removal or the making of arrangements for the removal of each injured person to a physician or hospital for medical treatment.

(3) Immediately give notice of the accident by the quickest means of communication to one (1) of the following:

(A) The local police department if the accident occurs within a municipality.

(B) The office of the county sheriff or the nearest state police post if the accident occurs outside a municipality.

(4) Within ten (10) days after the accident, forward a written report of the accident to the state police department.

As Jonathan points out, and we agree, the legislature limits the scope of this statute to incidents involving a vehicle striking something that causes injury to someone, or a vehicle striking a person and causing injury. Samuel testified that he was not struck by a vehicle. The trial court apparently believed Samuel's testimony, because the trial court granted the defense's motion for involuntary dismissal of Count I. In fact, the trial court did not believe that Samuel was pushed out of the vehicle by Darrell. This is evidenced by the trial court's grant of the defense's motion for involuntary dismissal of Count III.

In *State v. Eilers*, 697 N.E.2d 969, 970-971 (Ind.Ct.App.1998), this court held:

> When interpreting a statute the words and phrases in a statute are to be given their plain, ordinary, and usual meaning unless a contrary purpose is clearly shown by the statute itself. *Saurer v. Bd. of Zoning Appeals*, 629 N.E.2d 893, 897 (Ind.Ct.App.1994). . . . Although it is true that we must look to legislative intent when construing a statute with ambiguous language, "[i]f the language of a statute is clear and unambiguous it is not subject to judicial interpretation." *Town of Merrillville v. Merrillville Conservancy Dist.*, 649 N.E.2d 645, 649 (Ind.Ct.App.1995), *reh'g denied, trans. denied.*

The language of the statute here is clear and unambiguous, therefore we do not need to look beyond the statute for legislative intent.

[4] Webster's II New College Dictionary 1092 (2001) defines the word "struck" as a verb, meaning "[t]o collide with" or "[t]o move into violent contact." Ind.Code § 9-26-1-1 clearly must involve a person driving a vehicle. The vehicle is the instrument that causes the injury. Additionally, Ind.Code § 9-26-1-1(2)(B)(i) specifically states "person struck." It is true that Jonathan was driving the vehicle that Samuel fell out of. However, Samuel was not struck by that vehicle or any other vehicle. Samuel struck the pavement, but this is not contemplated by the statute. Consequently, we find that Ind.Code § 9-26-1-1 does not apply to Jonathan's situation.

Accordingly, we find that the trial court could not reasonably infer that Jonathan was guilty of failure to stop after an accident resulting in serious bodily injury. Therefore, we find that there is not substantial evidence of

probative value to support the conclusion of the trier of fact. *See Mabbitt*, 703 N.E.2d at 700.

CONCLUSION

Based on the foregoing, we conclude that Jonathan was improperly convicted of failure to stop after an accident resulting in serious bodily injury.

Reversed.

BROOK, J., and MATHIAS, J., concur.

APPENDIX P

BOUIE ET AL. v. CITY OF COLUMBIA

No. 10.

SUPREME COURT OF THE UNITED STATES

378 U.S. 347; 84 S.Ct. 1697; 12 L. Ed. 2d 894; 1964 U.S. LEXIS 825

October 14-15, 1963, Argued
June 22, 1964, Decided

COUNSEL: Matthew J. Perry, Constance Baker Motley and Jack Greenberg argued the cause for petitioners. With them on the brief were James M. Nabrit III, Charles L. Black, Jr., Juanita Jackson Mitchell, Tucker R. Dearing, Lincoln C. Jenkins, Derrick A. Bell, Jr., William T. Coleman, Jr., Louis H. Pollak, Richard R. Powell, Joseph L. Rauh, Jr. and John Silard.

David W. Robinson II and John W. Sholenberger argued the cause for respondent. With them on the briefs was David W. Robinson, Daniel R. McLeod, Attorney General of South Carolina, entered his appearance for respondent.

Ralph S. Spritzer, by special leave of Court, argued the cause for the United States, as amicus curiae, urging reversal. With him on the briefs were Solicitor General Cox, Assistant Attorney General Marshall, Louis F. Claiborne, Harold H. Greene, Howard A. Glickstein and David Rubin.

JUDGES: Warren, Black, Douglas, Clark, Harlan, Brennan, Steward, White Goldberg

OPINION BY: BRENNAN

OPINION: MR. JUSTICE BRENNAN delivered the opinion of the Court.

This case arose out of a "sit-in" demonstration at Eckerd's Drug Store in Columbia, South Carolina. In addition to a lunch counter, Eckerd's maintained several other departments, including those for retail drugs, cosmetics, and prescriptions. Negroes and whites were invited to purchase and were served alike in all departments of the store with the exception of the restaurant department, which was reserved for whites. There was no evidence that any signs or notices were posted indicating that Negroes would not be served in that department.

On March 14, 1960, the petitioners, two Negro college students, took seats in a booth in the restaurant department at Eckerd's and waited to be served. No one spoke to them or approached them to take their orders for food. After they were seated, an employee of the store put up a chain with a "no trespassing" sign attached. Petitioners continued to sit quietly in the booth. The store manager then called the city police department and asked the police to come and remove petitioners. After the police arrived at the store the manager twice asked petitioners to leave. They did not do so. The Assistant Chief of Police then asked them to leave. When petitioner Bouie asked "For what?" the Assistant Chief replied: "Because it's a breach of the peace. . . ." Petitioners still refused to leave, and were then arrested. They were charged with breach of the peace in violation of § 15-909, Code of Laws of South Carolina, 1952, but were not convicted. Petitioner Bouie was also charged with resisting arrest, and was convicted, but the conviction was reversed by the State Supreme Court for insufficiency of evidence. Both petitioners were also charged with criminal trespass in violation of § 16-386

of the South Carolina Code of 1952 (1960 Cum. Supp.);[1] on this charge they were convicted, and their convictions were affirmed by the State Supreme Court over objections based upon the Due Process and Equal Protection Clauses of the Fourteenth Amendment. 239 S.C. 570, 124 S.E.2d 332. We granted certiorari to review the judgments affirming these trespass convictions. 374 U.S. 805.

We do not reach the question presented under the Equal Protection Clause, for we find merit in petitioners' contention under the Due Process Clause and reverse the judgments on that ground.

Petitioners claim that they were denied due process of law either because their convictions under the trespass statute were based on no evidence to support the charge, see *Thompson v. Louisville*, 362 U.S. 199 or because the statute failed to afford fair warning that the conduct for which they have now been convicted had been made a crime. The terms of the statute define the prohibited conduct as "entry upon the lands of another . . . after notice from the owner or tenant prohibiting such entry. . . ." See note 1, *supra*. Petitioners emphasize the conceded fact that they did not commit such conduct; they

[1] That section provides: "*Entry on lands of another after notice prohibiting same.* – Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry as aforesaid for the purpose of trespassing."

received no "notice . . . prohibiting such entry" either before they entered Eckerd's Drug Store (where in fact they were invited to enter) or before they entered the restaurant department of the store and seated themselves in the booth. Petitioners thus argue that, under the statute as written, their convictions would have to be reversed for want of evidence under the *Thompson* case. The argument is persuasive but beside the point, for the case in its present posture does not involve the statute "as written." The South Carolina Supreme Court, in affirming petitioners' convictions, construed the statute to cover not only the act of entry on the premises of another after receiving notice not to enter, but also the act of remaining on the premises of another after receiving notice to leave.[2] Under the statute as so construed, it is clear that there was evidence to support petitioners' convictions, for they concededly remained in the lunch counter booth after being asked to leave. Petitioners contend, however, that by applying such a construction of the statute to affirm their convictions in this case, the State has punished them for conduct that was not criminal at the time they committed it, and hence has violated the requirement of the Due Process Clause that a criminal statute give fair warning of the conduct which it prohibits. We agree with this contention.

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[2] This construction of the statute was first announced by the South Carolina Supreme in *City of Charleston v. Mitchell*, 239 S.C. 376, 123 S.E.2d 512, decided on December 13, 1961, certiorari granted and judgment reversed, *post*, p. 551. In the instant case and in *City of Columbia v. Barr*, 239 S.C. 395, 123 S.E.2d 521, reversed, *ante*, p. 146, the South Carolina Supreme Court simply relied on its ruling in *Mitchell*.

The basic principle that a criminal statute must give fair warning of the conduct that it makes a crime has often been recognized by this Court. As was said in *United States v. Harriss*, 347 U.S. 612, 617,

> "The constitutional requirement of definiteness is violated by a criminal statute that fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed."

Thus we have struck down a state criminal statute under the Due Process Clause where it was not "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Connally v. General Const. Co.*, 269 U.S. 385, 391. We have recognized in such cases that "a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law," *ibid.*, and that "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 453.[3]

It is true that in the *Connally* and *Lanzetta* cases, and in other typical applications of the principle, the uncertainty as to the statute's prohibition resulted from vague

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[3] See also *McBoyle v. United States*, 283 U.S. 25, 27; *United States v. Cardiff*, 344 U.S. 174, 176-177; *Pierce v. United States*, 314 U.S. 306, 311.

or overbroad language in the statute itself, and the Court concluded that the statute was "void for vagueness." The instant case seems distinguishable, since on its face the language of § 16-386 of the South Carolina Code was admirably narrow and precise; the statute applied only to "entry upon the lands of another . . . after notice . . . prohibiting such entry. . . ." The thrust of the distinction, however, is to produce a potentially greater deprivation of the right to fair notice in this sort of case, where the claim is that a statute precise on its face has been unforeseeably and retroactively expanded by judicial construction, than in the typical "void for vagueness" situation. When a statute on its face is vague or overbroad, it at least gives a potential defendant some notice, by virtue of this very characteristic, that a question may arise as to its coverage, and that it may be held to cover his contemplated conduct. When a statute on its face is narrow and precise, however, it lulls the potential defendant into a false sense of security, giving him no reason even to suspect that conduct clearly outside the scope of the statute as written will be retroactively brought within it by an act of judicial construction. If the Fourteenth Amendment is violated when a person is required "to speculate as to the meaning of penal statutes," as in *Lanzetta*, or to "guess at (the statute's) meaning and differ as to its application," as in *Connally*, the violation is that much greater when, because the uncertainty as to the statute's meaning is itself not revealed until the court's decision, a person is not even afforded an opportunity to engage in such speculation before committing the act in question.

There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive

judicial expansion of narrow and precise statutory language. As the Court recognized in *Pierce v. United States*, 314 U.S. 306, 311, "judicial enlargement of a criminal act by interpretation is at war with a fundamental concept of the common law that crimes must be defined with appropriate definiteness." Even where vague statutes are concerned, it has been pointed out that the vice in such an enactment cannot "be cured in a given case by a construction in that very case placing valid limits on the statute," for

> "the objection of vagueness is two-fold: inadequate guidance to the individual whose conduct is regulated, and inadequate guidance to the triers of fact. The former objection could not be cured retrospectively by a ruling either of the trial court or the appellate court, though it might be cured for the future by an authoritative judicial gloss. . . ." Freund, The Supreme Court and Civil Liberties, 4 Vand.L.Rev. 533, 541 (1951).

See Amsterdam, Note, 109 U.Pa.L.Rev. 67, 73-74, n. 34.

If this view is valid in the case of a judicial construction which adds a "clarifying gloss" to a vague statute, *id.*, at 73, making it narrower or more definite than its language indicates, it must be a *fortiori* so where the construction unexpectedly broadens a statute which on its face had been definite and precise. Indeed, an unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an *ex post facto* law, such as Art. I, § 10, of the Constitution forbids. An *ex post facto* law has been defined by this Court as one "that makes an action done before the passing of the law, and which was *innocent* when done, criminal; and punishes such action," or "that *aggravates* a *crime*, or makes it

greater than it was, when committed." *Calder v. Bull*, 3 Dall. 386, 390.[4] If a state legislature is barred by the *Ex Post Facto* Clause from passing such a law, it must follow that a State Supreme Court is barred by the Due Process Clause from achieving precisely the same result by judicial construction. Cf. *Smith v. Cahoon*, 283 U.S. 553, 565. The fundamental principle that "the required criminal law must have existed when the conduct in issue occurred," Hall, General Principles of Criminal Law (2d ed. 1960), at 58-59, must apply to bar retroactive criminal prohibitions emanating from courts as well as from legislatures. If a judicial construction of a criminal statute is "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue," it must not be given retroactive effect. *Id.*, at 61.

The basic due process concept involved is the same as that which the Court has often applied in holding that an unforeseeable and unsupported state-court decision on a question of state procedure does not constitute an adequate ground to preclude this Court's review of a federal question. See, *e.g., Wright v. Georgia*, 373 U.S. 284, 291; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 456-458; *Barr v. City of Columbia*, *ante* p. 146. The standards of state decisional consistency applicable in judging the adequacy of a state ground are also applicable, we think, in determining whether a state court's construction of a criminal statute was so unforeseeable as to deprive the defendant of the

[4] Thus, it has been said that "No one can be criminally punished in this country, except according to a law prescribed for his government by the sovereign authority before the imputed offence was committed, and which existed as a law at the time." *Kring v. Missouri*, 107 U.S. 221, 235. See *Fletcher v. Peck*, 6 Cranch 87, 138; *Cummings v. Missouri*, 4 Wall. 277, 325-326.

fair warning to which the Constitution entitles him. In both situations, "a federal right turns upon the status of state law as of a given moment in the past – or, more exactly, the appearance to the individual of the status of state law as of that moment. . . ." 109 U.Pa.L.Rev., *supra*, at 74, n. 34. When a state court overrules a consistent line of procedural decisions with the retroactive effect of denying a litigant a hearing in a pending case, it thereby deprives him of due process of law "in its primary sense of an opportunity to be heard and to defend [his] substantive right." *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 678. When a similarly unforeseeable state-court construction of a criminal statute is applied retroactively to subject a person to criminal liability for past conduct, the effect is to deprive him of due process of law in the sense of fair warning that his contemplated conduct constitutes a crime. Applicable to either situation is this Court's statement in *Brinkerhoff-Faris, supra*, that "if the result above stated were attained by an exercise of the state's legislative power, the transgression of the due process clause of the Fourteenth Amendment would be obvious," and "The violation is none the less clear when that result is accomplished by the state judiciary in the course of construing an otherwise valid . . . state statute." *Id.*, at 679-680.

Applying those principles to this case, we agree with petitioners that § 16-386 of the South Carolina Code did not give them fair warning, at the time of their conduct in Eckerd's Drug Store in 1960, that the act for which they now stand convicted was rendered criminal by the statute. By its terms, the statute prohibited only "entry upon the lands of another . . . after notice from the owner . . . prohibiting such entry. . . ." There was nothing in the

statute to indicate that it also prohibited the different act of remaining on the premises after being asked to leave. Petitioners did not violate the statute as it was written; they received no notice before entering either the drugstore or the restaurant department. Indeed, they knew they would not receive any such notice before entering the store, for they were invited to purchase everything except food there. So far as the words of the statute were concerned, petitioners were given not only no "fair warning," but no warning whatever, that their conduct in Eckerd's Drug Store would violate the statute.[5]

The interpretation given the statute by the South Carolina Supreme Court in the *Mitchell* case, note 2, *supra*, so clearly at variance with the statutory language, has not the slightest support in prior South Carolina decisions. Far from equating entry after notice not to enter with remaining on the premises after notice to leave, those decisions emphasized that proof of notice before entry was necessary to sustain a conviction under § 16-386. Thus in *State v. Green*, 35 S.C. 266, 14 S.E. 619 (1892), the defendant was apparently in possession of the land when he was told to leave. Yet the prosecution was not for

[5] We think it irrelevant that petitioners at one point testified that they had intended to be arrested. The determination whether a criminal statute provides fair warning of its prohibitions must be made on the basis of the statute itself and the other pertinent law, rather than on the basis of an *ad hoc* appraisal of the subjective expectations of particular defendants. But apart from that, the record is silent as to what petitioners intended to be arrested for, and in fact what they *were* arrested for was not trespass but breach of the peace – on which charge they were not convicted. Hence there is no basis for an inference that petitioners intended to be arrested *for violating this statute*, either by remaining on the premises after being asked to leave or by an other conduct.

remaining on the land after such notice but for returning later, and the court said, "under the view we take of this provision of our laws, when the owner or tenant in possession of land forbids entry thereon, any person with notice who afterwards enters such premises, is liable to punishment." 35 S.C., at 268, 14 S.E., at 620. In *State v. Cockfield*, 15 Rich.Law (S.C.) 53, 55 (1867), the court after quoting the statute's provision (as it then read) that "Every entry on the inclosed or uninclosed lands of another, after notice from the owner or tenant, prohibiting the same, shall be deemed a misdemeanor," stated that this language "will not permit the Court to suppose that it was intended to have any other than the ordinary acceptation." See also *State v. Mays*, 24 S.C. 190 (1885); *State v. Tenny*, 58 S.C. 215, 36 S.E. 555 (1900); *State v. Olasov*, 133 S.C. 139, 130 S.E. 514 (1925). In sum, in the 95 years between the enactment of the statute in 1866 and the 1961 decision in the *Mitchell* case, the South Carolina cases construing the statute uniformly emphasized the notice-before-entry requirement, and gave not the slightest indication that that requirement could be satisfied by proof of the different act of remaining on the land after being told to leave.

In holding in Mitchell that "entry . . . after notice" includes remaining after being asked to leave, the South Carolina Supreme Court did not cite any of the cases in which it had previously construed the same statute. The only two South Carolina cases it did cite were simply irrelevant; they had nothing whatever to do with the statute, and nothing to do even with the general field of criminal trespass, involving instead the law of civil trespass – which has always been recognized, by the common law in general and by South Carolina law in particular, as

a field quite distinct and separate from criminal trespass. *Shramek v. Walker,* 152 S.C. 88, 149 S.E. 331 (1929), was an action for damages for an assault and battery committed by a storekeeper upon a customer who refused to leave the store after being told to do so; the defense was that the storekeeper was entitled to use reasonable force to eject an undesirable customer. The validity of such a defense was recognized, the court stating that "while the entry by one person on the premises of another may be lawful, by reason of express or implied invitation to enter, his failure to depart, on the request of the owner, will make him a trespasser and justify the owner in using reasonable force to eject him." 152 S.C., at 99-100, 149 S.E., at 336. *State v. Williams,* 76 S.C. 135, 56 S.E. 783 (1907), was a murder prosecution in which the defense was similarly raised that the victim was a trespasser against whom the defendant was entitled to use force, and the court approved the trial judge's instruction that a person remaining on another's premises after being told to leave is a trespasser and may be ejected by reasonable force. 76 S.C., at 142, 56 S.E., at 785.

Both cases thus turned wholly upon tort principles. For that reason they had no relevance whatever, under South Carolina law prior to the *Mitchell* case, to § 16-386 in particular or to criminal trespass in general. It is one thing to say that a person remaining on another's land after being told to leave may be ejected with reasonable force or sued in a civil action, and quite another to say he may be convicted and punished as a criminal. The clear distinction between civil and criminal trespass is well recognized in the common law. Thus it is stated, in 1 Bishop, Criminal Law, § 208 (9th ed. 1923) that

> "In civil jurisprudence, when a man does a thing by permission and not by license, and, after proceeding lawfully part way, abuses the liberty the law had given him, he shall be deemed a trespasser from the beginning by reason of this subsequent abuse. But this doctrine does not prevail in our criminal jurisprudence; for no man is punishable criminally for what was not criminal when done, even though he afterward adds either the act or the intent, yet not the two together."

Unless a trespass is "committed under such circumstances as to constitute an actual breach of the peace, it is not indictable at common law, but it to be redressed by a civil action only." Clark and Marshall, Crimes (5th ed. 1952), at 607.[6] There is no reason to doubt that, until the *Mitchell* case, this basic distinction was recognized in South Carolina itself. In *State v. Cargill*, 2 Brev. 114 (1810), the South Carolina Supreme Court reversed a conviction for forcible entry, saying

> "If the prosecutor had a better right to the possession than the defendant, he might have availed himself of his civil remedy. The law will not punish, criminally, a private injury of this nature. There must be, at least, some appearance of force by acts, words, or gestures, to constitute the offence charged." *Id.*, at 115. (Italics added.)

Under pre-existing South Carolina law the two cases relied on by the State Supreme Court were thus completely unrelated, not only to this particular statute, but to

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[6] Accord, *Krauss v. State*, 216 Md. 369, 140 A.2d 653 (1958); 2 Wharton, Criminal Law and Procedure, § 868 (1957); Hochheimer, Law of Crimes and Criminal Procedure, §§ 327-329 (2d ed.).

the entire field of criminal trespass. The pre-existing law gave petitioners no warning whatever that this criminal statute would be construed, despite its clear language and consistent judicial interpretation to the contrary, as incorporating a doctrine found only in civil trespass cases.[7]

The South Carolina Supreme Court in *Mitchell* also cited North Carolina decisions in support of its construction of the statute. It would be a rare situation in which the meaning of a statute of another State sufficed to afford a person "fair warning" that his own State's statute meant something quite different from what its words said. No such situation is presented here. The meaning ascribed by the North Carolina Supreme Court to the North Carolina criminal trespass statute – also a ruling first announced in a "sit-in" case of recent vintage – was expressly based on what criminal trespass cases in North Carolina had

[7] Indeed, it appears that far from being understood to incorporate a doctrine of civil trespass, § 16-386 is considered in South Carolina not to incorporate *any* common law of trespass, either criminal or civil – in other words, not to be a "trespass" statute at all. South Carolina has long had on its books, side by side with § 16-386, a statute that does deal *eo nomine* with "trespass"; § 16-382 makes it unlawful to "wilfully, unlawfully and maliciously . . . commit any . . . trespass upon real property in the possession of another . . ." When South Carolina in 1960 enacted legislation dealing specifically with a refusal to leave upon request (thus filling the gap which the South Carolina Supreme Court has filled by judicial construction in *Mitchell* and in this case), it apparently gave express recognition to the distinction between the two statutes, declaring that "The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another." South Carolina Code of 1962, § 16-388. Thus it would seem that § 16-386 is regarded by state law as dealing not with "trespass," but rather with the distinct offense of "entry on lands of another" after notice not to enter. The contention that the statute was understood to incorporate a doctrine of civil trespass law is therefore all the more untenable.

"repeatedly held." *State v. Clyburn*, 247 N.C. 455, 462, 101 S.E.2d 295, 300 (1958). As was demonstrated above, South Carolina's criminal trespass decisions prior to *Mitchell* had "repeatedly held" no such thing, nor had they even intimated the attribution of such a meaning to the words "entry . . . after notice" in § 16-386. Moreover, if the law of other States is indeed to be consulted, it is the prior law of South Carolina, not the law first announced in *Mitchell*, that is consonant with the traditional interpretation of similar "entry . . . after notice" statutes by other state courts. Thus in *Goldsmith v. State*, 86 Ala. 55, 5 So. 480 (1889), the Alabama court construed § 3874 of the Alabama Code of 1887, imposing criminal penalties on one who "enters . . . after having been warned . . . not to do so," and held that

> "There must be a warning first, and an entry afterwards. One already in possession, even though a trespasser, or there by that implied permission which obtains in society, can not, by a warning then given, be converted into a violator of the statute we are construing, although he may violate some other law, civil or criminal." 86 Ala., at 57, 5 So., at 480-481.[8]

In Martin v. City of Struthers, 319 U.S. 141, 147, this Court noted that "Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off." Section 16-386 of the South Carolina Code is simply an example of this "traditional American law." In construing such

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[8] See *Pennsylvania R. Co. v. Fucello*, 91 N.J.L. 476, 477, 103 A. 988 (1918); *Commonwealth v. Richardson*, 313 Mass. 632, 48 N.E.2d 678 (1943); *Brunson v. State*, 140 Ala. 201, 203, 37 So. 197, 198 (1904).

statutes, other state courts have recognized that they apply only to "entry onto" the property of another after notice not to enter, and have not interpreted them to cover also the distinct act of remaining on the property after notice to leave. The South Carolina Supreme Court's retroactive application of such a construction here is no less inconsistent with the law of other States than it is with the prior case law of South Carolina and, of course, with the language of the statute itself.

Our conclusion that petitioners had no fair warning of the criminal prohibition under which they now stand convicted is confirmed by the opinion held in South Carolina itself as to the scope of the statute. The state legislature was evidently aware of no South Carolina authority to the effect that remaining on the premises after notice to leave was included within the "entry after notice" language of § 16-386. On May 16, 1960, shortly after the "sit-in" demonstration in this case and prior to the State Supreme Court's decision in *Mitchell*, the legislature enacted § 16-388 of the South Carolina Code, expressly making criminal the act of failing and refusing "to leave immediately upon being ordered or requested to do so." Similarly, it evidently did not occur to the Assistant Chief of Police who arrested petitioners in Eckerd's Drug Store that their conduct violated § 16-386, for when they asked him why they had to leave the store, he answered, "Because it's a breach of the peace. . . ." And when he was asked further whether he was assisting the drugstore manager in ousting petitioners, he answered that he was not, but rather that "My purpose was that they were creating a disturbance there in the store, a breach of the peace in my presence, and that was my purpose." It thus appears that neither the South Carolina Legislature nor

the South Carolina police anticipated the present construction of the statute.

We think it clear that the South Carolina Supreme Court, in applying its new construction of the statute to affirm these convictions, has deprived petitioners of rights guaranteed to them by the Due Process Clause. If South Carolina had applied to this case its new statute prohibiting the act of remaining on the premises of another after being asked to leave, the constitutional proscription of *ex post facto* laws would clearly invalidate the convictions. The Due Process Clause compels the same result here, where the State has sought to achieve precisely the same effect by judicial construction of the statute. While such a construction is of course valid for the future, it may not be applied retroactively, any more than a legislative enactment may be, to impose criminal penalties for conduct committed at a time when it was not fairly stated to be criminal. Application of this rule is particularly compelling where, as here, the petitioners' conduct cannot be deemed improper or immoral. Compare *McBoyle v. United States*, 283 U.S. 25.[9]

In the last analysis the case is controlled, we think, by the principle which Chief Justice Marshall stated for the Court in *United States v. Wiltberger*, 5 Wheat. 76, 96:

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[9] See Freund, 4 Vand.L.Rev., *supra*, at 540: "In applying the rule against vagueness or overbroadness something . . . should depend on the moral quality of the conduct. In order not to chill conduct within the protection of the Constitution and having a genuine social utility, it may be necessary to throw the mantle of protection beyond the constitutional periphery, where the statute does not make the boundary clear."

> "The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorise us to say so. It would be dangerous, indeed, to carry the principle, that a case which is within the reason or mischief of a statute, is within its provisions, so far as to punish a crime not enumerated in the statute, because it is of equal atrocity, or of kindred character, with those which are enumerated. . . ."

The crime for which these petitioners stand convicted was "not enumerated in the statute" at the time of their conduct. It follows that they have been deprived of liberty and property without due process of law in contravention of the Fourteenth Amendment.

Reversed.

MR. JUSTICE GOLDBERG, with whom THE CHIEF JUSTICE joins, would, while joining in the opinion and judgment of the Court, also reverse for the reasons stated in the concurring opinion of MR. JUSTICE GOLDBERG in *Bell v. Maryland*, *ante*, p. 286.

MR. JUSTICE DOUGLAS would reverse for the reasons stated in his opinion in *Bell v. Maryland*, *ante*, p. 242.

DISSENT BY: BLACK

DISSENT: MR. JUSTICE BLACK, with whom MR. JUSTICE HARLAN and MR. JUSTICE WHITE join, dissenting.

This case arose out of a "sit-in" demonstration which took place at Eckerd's Drug Store in Columbia, South Carolina. The petitioners, two Negro college students, went to the store, took seats in a booth in the restaurant department, and waited to be served. The store's policy was to sell to Negroes as well as whites in all departments except the restaurant. After petitioners sat down, a store employee put up a chain with a "no trespassing" sign attached. Petitioners nevertheless continued to sit quietly in the booth. The store manager then called the city police department and asked the police to come and remove petitioners. After the police arrived at the store the manager twice asked petitioners to leave. They did not do so. The Chief of Police then twice asked them to leave. When they again refused, he arrested them both. They were charged with criminal trespass in violation of § 16-386 of the South Carolina Code,[1] tried in Recorder's Court, and found guilty.[2] On appeal the County Court in an unreported

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[1] Section 16-386, Code of Laws of South Carolina, 1952 (1960 Supp.), provides:

> "*Entry on lands of another after notice prohibiting same.* Every entry upon the lands of another where any horse, mule, cow, hog or any other livestock is pastured, or any other lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicious places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry as aforesaid for the purpose of trespassing."

[2] Both petitioners were also charged with breach of the peace in violation of § 15-909, Code of Laws of South Carolina, 1952, but were not convicted. Petitioner Bouie in addition was charged with and convicted of resisting arrest; that conviction was affirmed by the

(Continued on following page)

opinion affirmed the convictions. Petitioners then appealed to the Supreme Court of South Carolina, which likewise affirmed over petitioners' objections that by convicting them the State was denying them due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment. 239 S.C. 570, 124 S.E.2d 332. This Court granted certiorari to consider these questions. 374 U.S. 805.

It is not contradicted that the store manager denied petitioners service and asked them to leave only because of the store's acknowledged policy of not serving Negroes in its restaurant. Apart from the fact that they remained in the restaurant after having been ordered to leave, petitioners' conduct while there [sic] was peaceful and orderly. They simply claimed that they had a right to be served; the manager insisted, as the State now insists, that he had a legal right to choose his own customers and to have petitioners removed from the restaurant after they refused to leave at his request. We have stated today in *Bell v. Maryland*, *ante*, p. 318, our belief that the Fourteenth Amendment does not of its own force compel a restaurant owner to accept customers he does not want to serve, even though his reason for refusing to serve them may be his racial prejudice, adherence to local custom, or what he conceives to be his economic self-interest, and that the arrest and conviction of a person for trespassing in a restaurant under such circumstances is not the kind of "state action" forbidden by the Fourteenth Amendment. Here as in the *Bell* case there was, so far as has been pointed out to us, no city ordinance, official utterance, or

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County Court but reversed by the State Supreme Court for insufficiency of evidence.

state law of any kind tending to prevent Eckerd's from serving these petitioners had it chosen to do so. Compare *Robinson v. Florida*, *ante*, p. 153; *Lombard v. Louisiana*, 373 U.S. 267; *Peterson v. City of Greenville*, 373 U.S. 244. On the first question here raised, therefore, our opinion in *Bell v. Maryland* is for us controlling.

Petitioners also contend that they were denied due process of law either because their conviction under the trespass statute was based on no evidence to support the charge, cf. *Thompson v. City of Louisville*, 362 U.S. 199, or because that statute as applied was so vague and indefinite that it failed to furnish fair warning that it prohibited a person who entered the property of another without notice not to do so from remaining after being asked to leave, cf. *Edwards v. South Carolina*, 372 U.S. 229; *Cantwell v. Connecticut*, 310 U.S. 296; *Lanzetta v. New Jersey*, 306 U.S. 451. Under the State Supreme Court's construction of the statute, it is clear that there was evidence to support the conviction. There remains to be considered, therefore, only the vagueness contention, which rests on the argument that since the statutory language forbids only "entry upon the lands of another . . . after notice . . . prohibiting such entry," the statute cannot fairly be construed as prohibiting a person from remaining on property after notice to leave. We voted to sustain a Maryland trespass statute[3] against an identical challenge in *Bell v. Maryland*, *supra*. While there is some difference in the language of the South Carolina and Maryland statutes – the Maryland statute prohibited entering or crossing over the lands of another after notice not to do so,

[3] Md.Code, Art. 27, § 577.

while South Carolina's statute speaks only of entry and not of crossing over – this distinction has no relevance to the statute's prohibition against remaining after being asked to leave. In holding that the South Carolina statute forbids remaining after having been asked to leave as well as entry after notice not to do so, the South Carolina courts relied in part on the fact that it has long been accepted as the common law of that State that a person who enters upon the property of another by invitation becomes a trespasser if he refuses to leave when asked to do so. See, *e.g.*, *Shramek v. Walker*, 152 S.C. 88, 149 S.E. 331 (1929); *State v. Williams*, 76 S.C. 135, 142, 56 S.E. 783, 785 (1907); *State v. Lazarus*, 1 Mill Const. 34 (1817). We cannot believe that either the petitioners[4] or anyone else could have been misled by the language of this statute into believing that it would permit them to stay on the property of another over the owner's protest without being guilty of trespass.

We would affirm.

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[4] The petitioners testified that they had agreed the day before to "sit in" at the drugstore restaurant. One petitioner said that he had intended to be arrested; the other said that he had the same purpose "if it took that."

APPENDIX Q

RUNYON v. STATE OF INDIANA

No. 27596.

Supreme Court of Indiana.

219 Ind. 352; 38 N.E.2d 235; 1941 Ind. LEXIS 245

December 29, 1941, Filed

COUNSEL: James A. Collins, Frank A. Symmes, Charles W. Symmes, and Wray E. Fleming, all of Indianapolis, for appellant.

George N. Beamer, Attorney General, and Walter O. Lewis, Deputy Attorney General, for the State.

JUDGES: RICHMAN, Judge.

OPINION BY: RICHMAN

OPINION: RICHMAN, J. Appellant, waiving a jury, was convicted of violating § 2 of ch. 190, Acts 1929, which provided that the driver of a motor vehicle involved in an accident causing death, personal injury or property damage "shall immediately stop, render or offer to render assistance, and give to the injured person or to some person who is with such injured person or to the owner or person in charge and control of the damaged property, his name, residence address including street number, city or town, county and state, also the license number of said motor vehicle . . . and produce or offer for inspection, the certificate of registration therefor: *Provided*, That if such person is either killed or rendered unconscious and there is no other person to whom such person involved in the accident can report, then such person shall report such information to a police or peace officer, or in case no police or peace officer is in the vicinity of the place of such injury

or accident, then he shall report such injury or accident to the nearest police station, peace officer or judicial officer."

The indictment closely follows the language of the statute and negatives compliance with every duty enjoined thereby. It alleges that two persons, Noah Russell and Margaret Russell, were killed in the accident and that appellant failed to stop and give to them the assistance and information required, "nor to any person" with them, nor to any other of the several officers mentioned in the proviso.

The overruling of motions to quash and in arrest of judgment, assigned as error, test the sufficiency of the indictment. The specific objections all go to the lack of certainty which is properly raised by the motion to quash.

Appellant asserts that the indictment charges three offenses and is therefore bad for duplicity. We are of the opinion that failure to stop, failure to render assistance and failure to give the information as to appellant's identity are parts of but one offense for which there can be but one punishment. Similar statutes have been so construed in *People v. Huber* (1923), 64 Cal. App. 352, 354, 221 P. 695, 696; *State v. Razey* (1929), 129 Kan. 328, 282 P. 755, 66 A.L.R. 1225, and *Commonwealth v. Zeitler* (1922), 79 Pa. Sup. 81.

Appellant makes the point that the word "immediately" contained in the statute is omitted from the indictment. It charges however that she "did then and there unlawfully and feloniously fail to stop" which was sufficient. The theory of the indictment is that she failed to stop at all which includes the charge that she failed immediately to stop.

A more substantial objection is that the indictment does not give the name of the person referred to in the phrase "nor to any person with the said Noah Russell and Margaret Russell." Only by implication from this phrase does the indictment disclose that anyone was with the two persons killed. The evidence shows, however, that Noah was the father of Margaret, whom he was carrying, and that his wife, carrying another small child, was walking with him when he was killed. Appellant insists that the wife's name should have been stated in the indictment so that it might be known with certainty to whom the aid and information should have been given.

In support of this position appellant relies upon *Gardner v. State* (1853), 4 Ind. 632; *McLaughlin v. State* (1873), 45 Ind. 338; *Zook v. State* (1874), 47 Ind. 463; *Burton v. State* (1881), 75 Ind. 477, and *Walters v. State* (1910), 174 Ind. 545, 92 N.E. 537. The *Gardner* case held only that under the law in force prior to the adoption of the Code in 1852 it was not proper to describe a defendant by his initials only but that his Christian name must be stated. The *Burton* case on similar facts is rested on this case.

In the *Zook* case prosecution was under a statute making it an offense for the proprietor of a pool room to permit a minor to play at any of the tables. The court held the indictment insufficient because it did not show that a game was played and also because it did "not name the person with whom the minor played, and a conviction on this indictment would not be a bar to another indictment charging that the minor played with a person named." We do not think this reasoning applies to the case at bar. If appellant had stopped and given the required information to any person who was with the person killed, she would

not have been liable to a second prosecution. There might well be two or more offenses committed on the same day in the same pool room under the gaming statute but under the "hit and run" statute only one offense is involved in any one accident. Conviction of that one offense would bar any further prosecution. The statutes involved in the *McLaughlin* case, *supra*, forbade sales of liquor to certain classes of purchasers. The indictment charged "generally that the defendant sold liquor to divers persons" but named no person. Every sale, of course, constituted a separate offense and it is apparent that the defendant would have no knowledge of the identity of the specific offense unless the person to whom the sale was made was named in the indictment and therefore could not properly prepare his defense. For this very good reason the indictment was subject to motion to quash. The *Walters* case, *supra*, recognized this rule as applicable to a later liquor statute but refused to hold that "W. E. Clark," given as the name of the purchaser, was insufficient because only the initials were used.

In this case the name of the person with Noah Russell was of secondary importance. Appellant had completely within her own knowledge a defense or lack of defense to the indictment which charged that she gave no information to any one within the purview of the statute. The indictment negatived any attempt at compliance with the law, not an insufficient compliance. If the evidence should show that a defendant stopped, rendered aid, and gave the required information to some one who apparently had been with persons who were killed in an automobile collision it is inconceivable that a court or jury would be so technically minded as to convict because the information was given to a person who in fact had not been with them

but arrived after the accident. The purpose of the statute is to provide prompt aid for persons who are injured or whose property is damaged and to sufficiently establish the identity of the parties so that they and police authorities may know with whom to deal in matters growing out of the accident. A defense that shows reasonable compliance with these requirements can be made without knowledge of the name of the person or persons who were with those incapacitated by the collision. It would seem indeed that any such reasonable compliance would result in the defendant's procuring the name of the person to whom the information should be given. In this case, where the sole defense is that appellant was not involved in the collision, we find it difficult to separate the theoretical from the practical or, in other words, to treat the motion to quash as presenting an abstract legal proposition upon the decision of which a defendant may predicate an error which could not possibly have been harmful.

Appellant further insists that the use of disjunctives makes the indictment uncertain. The language referred to reads:

> "and, did then and there unlawfully and feloniously fail to give to the said Noah Russell and Margaret Russell, nor to any person with the said Noah Russell and Margaret Russell, nor to a police officer, nor to a peace officer, nor to the nearest police station, nor to the nearest peace officer, nor to the nearest judicial officer, her, the said Mary Runyon's name, residence address and license number of said automobile, neither did she then and there produce nor offer for inspection the certificate of registration for said automobile."

We think the wording is awkward and ungrammatical but that the meaning is clear, namely, that appellant did not give to any of the persons mentioned in the statute the information required to be given. Perhaps the State might have obviated the necessity of bringing numerous police and peace officers to testify of appellant's failure to report to them, if the indictment had been so worded as to show that Mrs. Russell was with her husband when he was killed and was not given the information required of appellant. But it was not drawn on that theory. As against every objection urged the indictment was sufficient. *Kennedy v. State* (1936), 209 Ind. 287, 196 N.E. 316; *Foust v. State* (1928), 200 Ind. 76, 161 N.E. 371.

By three separate specifications in her motion for a new trial appellant presents substantially one question, the sufficiency of the evidence to sustain the finding. She did not testify. Her connection with the accident rests on circumstantial evidence corroborated by her own extra-judicial statement.

On a rainy Saturday evening in December shortly after six o'clock Mr. and Mrs. Russell, each carrying a child, were walking west on the north side of the National Road close to a bridge in Bridgeport near the town's west limits. A car following them struck Mr. Russell. In a car approaching from the west were three men, one of whom testified that he saw a car coming from the east and that near the bridge it swerved to the left and its right head lamp went out. The driver thereof did not stop and the car disappeared west of Bridgeport. The three men heard a woman screaming, their car was stopped, turned around and its headlights trained on the scene of the accident. The body of Russell was lying on the highway. The child he had been carrying was picked up by one of the men and

died before he could reach a doctor's office in Bridgeport. A crowd gathered and traffic was flagged down with a flashlight. Soon thereafter a Chevrolet car appeared from the west with right headlight and windshield broken. When attempt to halt it was made, the driver speeded east. At a filling station about two blocks east of the scene a Chevrolet car of such description turned around and went back west. As it turned a piece of glass fell or was thrown therefrom. The crowd remained for an hour or more at the scene of the accident. Three deputy sheriffs arrived from Indianapolis about 6:36 p.m. and remained in Bridgeport for two hours until they completed their investigation. To one of them was given the piece of glass. A witness who was in front of a store in Bridgeport about five hundred feet from the place of impact heard the "thumping sound" when the car struck Russell and saw it swerve immediately thereafter. No one that night stopped, admitted his or her identity as the driver of the car which hit Russell, or gave any of the information required by the statute to any person at the scene of the accident.

Appellant's written statement made two days later was admitted in evidence without objection, as follows:

> "My name is Mary Runyon. I am 37 years old and I live with my mother at Plainfield, Indiana. On Saturday, December 4th, I left Indianapolis at about 5:50 p.m. to drive to my home at Plainfield. When I arrived at the west side of Bridgeport something hit the windshield of my car and broke it. I then drove to the County line road and turned around and drove back and looked to see what had hit my car but I could not see anything. I did not get out of my car but I looked as good as I could but did not see anything. I then drove to the closest place where I could turn around and

then I drove back over the road again. I then could not see anything. I then drove on home to Plainfield and put my car in my garage. I then saw that the right headlight and the right fender were broken. Sunday morning I looked at the car and then I saw there was a dent on the right side of the hood of my car. I had told my mother and my sister-in-law and my aunt who also live with my mother that something had hit my car on the National Road. Sunday, when I saw the Sunday paper, I said to my mother that I must have hit something from that wreck that flew up and hit my car and broke the windshield. On Monday, December 6th, I went to Raymond Calbert's garage and I told him about my accident and that I wanted him to fix my car. He said that he would as soon as possible. I came to Indianapolis on the 10:23 a.m. interurban car and did some shopping. When I arrived home this evening, Monday, December 6th, I read in the paper about the accident. Then I thought that maybe it might have been my car so I then called Dr. Thatcher, deputy coroner of Marion County, and told him about my accident and he told me to come to the sheriff's office at the County jail which I did. I did not drive through any filling station or stop at any filling station but I might have turned around by the side of a station at the road I turned around at at [sic] Bridgeport. I was driving about 35 miles per hour when the object hit my car. I left the State Board of Health office where I work at about 11:00 a.m., December 4th, and I was in the different stores Christmas shopping until evening when I started home. I did not throw any glass or anything else out of my car at Bridgeport."

Photographs of appellant's car are in the record. They show the right front fender bent inward with several transverse dents in the front portion, the glass of the right headlight broken and the frame thereof bent backward and inward, a large uneven dent in the right portion of the hood with corresponding dent in that portion of the cowl that is covered by the hood, a jagged hole shaped like an hour glass in the right side of the windshield with at least one-fourth of the windshield glass missing and around the edges of the hole cracks in the "shatter-proof" glass. There was testimony that the piece of glass which was picked up at the filling station fitted into that part of the hole in the windshield nearest to the wheel of the car. This and other corroboratory evidence amply justified the trial court's conclusion that appellant's car was involved in this accident. Little is said in the briefs to the contrary.

But appellant insists that the State did not show that she had knowledge that she had been involved in an accident. It is inconceivable that the driver of a car which hit a man so hard that the impact of the blow was heard four or five hundred feet and which was so badly damaged as the testimony and photographs disclosed, should not know that there had been a serious accident. Her statement also is incredible that she drove back past the scene into Bridgeport and then west the second time without becoming aware of the crowd, the dead body of Russell, the screams of his wife and the other unusual conditions that would indicate to any passing driver that an accident had occurred. Even if there were two possible inferences from the evidence, one consistent with her lack of knowledge, nevertheless the trial court could draw the inference of knowledge and we upon appeal can not say that he should

have drawn the other inference. *White v. State ante*, p. 290, 37 N.E.2d 937.

There is sufficient evidence in the record to establish every element of the offense, that appellant's car struck Russell, that she then knew thereof, that she did not stop nor aid nor offer to aid the victims, nor disclose to any one that night any of the information required by the sta[illegible]te.

Judgment affirmed.

APPENDIX R

TONI NIELD, Appellant-Defendant, vs. STATE OF INDIANA, Appellee-Plaintiff.

No. 49A02-9605-CR-301.

COURT OF APPEALS OF INDIANA, SECOND DISTRICT

677 N.E.2d 79; 1997 Ind. App. LEXIS 86

March 4, 1997, Filed

COUNSEL: FOR APPELLANT: WILLIAM F. THOMS, JR. Indianapolis, Indiana.

FOR APPELLEE: PAMELA CARTER, Attorney General of Indiana, LISA M. PAUNICKA, Deputy Attorney General, Indianapolis, Indiana

JUDGES: FRIEDLANDER, Judge. KIRSCH, J. and STATON, J. concur.

OPINION BY: FRIEDLANDER

OPINION:

OPINION

FRIEDLANDER, Judge

Toni Nield appeals her conviction of two counts of Failure to Stop After an Accident Involving Injury or Death,[1] a class D felony. Nield presents the following restated issues for review:

1. Was the evidence sufficient to support the conviction?

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[1] Ind.Code Ann. § 9-26-1-1 (West 1992).

2. Did the conviction of two counts of failure to stop violate double jeopardy principles?

We affirm in part, reverse in part, and remand.

The evidence favorable to the judgment is that at approximately 9:30 p.m. on August 25, 1995, Jerry Backus and Stephen Church were operating motorcycles westbound on 21st Street in Indianapolis. Nield was driving her automobile eastbound on 21st Street. Nield did not see Backus and Church and turned into their paths, striking both motorcycles. Backus and Church were both thrown from their motorcycles and sustained serious injuries.

By coincidence, the accident occurred in front of the liquor store at which Nield worked. Immediately after the collisions, Nield ran into the liquor store and dialed 911. Andrea Yanez, who worked at the What A Tan business located next door to the liquor store and was acquainted with Nield, saw the accident. Yanez ran into the liquor store to call for help and discovered that Nield had already dialed 911 but appeared to be too upset to talk. Yanez took the phone from Nield and supplied the operator with the relevant information. Yanez then saw Nield run out of the back of the liquor store. Yanez ran back to her business, retrieved some towels, and ran to assist Backus and Church. Yanez did not see Nield at the scene of the accident after she saw Nield run out the back of the store.

Nield was convicted as set out previously following a bench trial.

1.

Nield contends the evidence was insufficient to support the judgment.

When reviewing the sufficiency of the evidence, we neither reweigh evidence nor judge witness credibility, but consider only the evidence favorable to the judgment, together with the reasonable inferences to be drawn therefrom. *Jenkins v. State*, 627 N.E.2d 789 (Ind. 1993), *cert. denied*, 130 L.Ed.2d 21, 115 S.Ct. 64.

IC § 9-26-1-1 provides that a driver involved in an accident resulting in injury or death must do the following: 1) Stop the vehicle immediately; 2) remain at the scene; 3) give his or her name, address, and vehicle identification number; 4) exhibit his or her driver's license upon request; 5) render reasonable assistance to persons injured in the accident; 6) immediately notify the appropriate law enforcement authority; and 7) forward a written report of the accident to the state police department within ten days of the accident. Inasmuch as the elements are listed in the conjunctive, a person commits a criminal offense in failing to adhere to any one of the requirements. *State v. Kimener*, 235 Ind. 191, 132 N.E.2d 264 (1956).

The statute does not clarify the length of time one must remain at the scene of an accident except to provide that the driver must remain long enough to perform certain acts. Yanez testified that Nield left through the back door of the store and did not return. It may reasonably be inferred by Nield's absence after making the phone call that, among other things, she did not comply with the statutory mandate to give her name, address, and vehicle identification number. Nield argued at trial that this requirement was satisfied by virtue of the fact that Nield

was known to Yanez and the employees of the liquor store, and that her name and address could be obtained through records kept by both the liquor store and What A Tan, where she was a customer.

It is true that the information Nield was required to give was obtainable through other means in the instant case. In addition to the fact that she was known to Yanez and the employees of the liquor store, the same information could presumably have been obtained by checking the license plate and registration of Nield's vehicle, which was left at the scene. However, this does not alter the fact that Nield was obligated by statute to remain and provide the required information, and she did not do so. Therefore, we conclude that Yanez's testimony was sufficient to support the conviction.

2.

Nield contends that her conviction of two counts of leaving the scene of an accident violates double jeopardy principles because both convictions stem from only one accident.

The Double Jeopardy Clause protects a person from suffering a second prosecution for the same offense after acquittal, a second prosecution for the same offense after conviction, and multiple punishments for the same offense. *Bryant v. State*, 660 N.E.2d 290 (Ind. 1995), *cert. denied*, 136 L.Ed.2d 213, 117 S.Ct. 293 (1996). The instant case implicates the third protection mentioned above, i.e., multiple punishments for the same offense.

Legislative intent in enacting a statute is the key consideration when determining whether the Double Jeopardy Clause protects against multiple punishments for the same offense under a particular statute.

The whole point of whether multiple offenses of the same statute are committed during a single transaction focuses on the definition of the crime involved. [Citation omitted.] Thus, the touchstone of whether the double jeopardy clause is violated is the legislature's articulated intent.

Marshall v. State, 563 N.E.2d 1341, 1342 (Ind. Ct. App. 1990), *trans. denied.*

In *Kelly v. State,* 527 N.E.2d 1148 (Ind. Ct. App. 1988), *aff'd,* 539 N.E.2d 25 (Ind. 1989), this court determined that the essence of the crime of operating a vehicle while intoxicated resulting in death is the act of operating a vehicle while intoxicated. This was contrasted with crimes such as murder and battery, for which the gravamen of the offense is causing the death or injury of another person. In the latter cases, the offense prohibited by statute has been violated several times over where multiple deaths or injuries occur in the course of a single incident. In the former, the statute is violated only once, even if there are multiple deaths.

IC § 9-26-1-1 imposes certain enumerated duties upon a driver who is involved in an accident. Those duties may generally be summarized as immediately notifying law enforcement authorities that the accident occurred, providing information regarding the driver's identity, license, and vehicle, and rendering assistance to injured persons. The statute does not frame these duties in terms of the number of vehicles involved or the number of persons injured. Rather, IC § 9-26-1-1 merely requires that the duties be performed upon the occurrence of "an accident." Had the legislature chosen to impose separate duties for each vehicle or person injured in such an accident, it could

have done so. However, we discern no such intent in the language of the statute, and therefore conclude that the essence of the statute is to remain at the scene of an accident and fulfill the enumerated duties, regardless of the number of persons injured.

The statute in question does not define the term "accident." When construing a statute, we attribute the common, ordinary meaning to terms found in everyday speech. *Spangler v. State*, 607 N.E.2d 720 (Ind. 1993). An accident is "a sudden event or change occurring without intent or volition through carelessness, unawareness, ignorance, or a combination of causes and producing an unfortunate result." *Webster's Third International Dictionary* 11 (1976). In the context of vehicular collisions, we conclude that an "accident" means the entirety of an occurrence that results from a common initiating event, regardless of whether more than two vehicles were involved.

In the instant case, although Nield struck two separate motorcycles, the impacts were nearly simultaneous and were the result of the same improper turn. We conclude that, consistent with the ordinary meaning set out above, Nield was involved in only one "accident" within the meaning of IC § 9-26-1-1. Accordingly, because the essence of the statute is that a driver is to remain at the scene of an accident and fulfill the prescribed duties, Nield could not be convicted twice under the statute for leaving the scene of a single accident. Therefore, we remand with instructions to dismiss one of the convictions and to resentence accordingly.

Judgment affirmed in part, reversed in part, and remanded.

KIRSCH, J. and STATON, J. concur.